



71 of 72 DOCUMENTS

48 FR 14146

FEDERAL REGISTER

40 CFR Parts 122, 123, 124, 125, 144, 145, 146, 233, 260, 261, 262, 263, 264, 265, 270,  
and 271

Environmental Permit Regulations: RCRA Hazardous Waste; SDWA Underground  
Injection Control; CWA National Pollutant Discharge Elimination System; CWA Section  
404 Dredge or Fill Programs; and CAA Prevention of Significant Deterioration

[PART ONE OF TWO]

[FRL 2293-5]

April 1, 1983

ACTION: Final Rule.

SUMMARY: This rule reorganizes the presentation of permit program requirements governing the Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), the Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA), the National Pollutant Discharge Elimination System (NPDES) and the Dredge or Fill ( § 404) programs under the Clean Water Act (CWA), and the Prevention of Significant Deterioration (PSD) program under the Clean Air Act. This rule makes *no substantive changes* to any of the affected sections. The Agency is simply physically deconsolidating its Consolidated Permit Regulations in response to the President's Task Force on Regulatory Relief which asked that the Environmental Protection Agency review the Consolidated Permit Regulations. Our intent is to make the regulations easier to understand and to use.

-- Part 122 of the Consolidated Permit Regulations is split into portions applicable specifically to RCRA (new Part 270), UIC (new Part 144), 404 (new Part 233), and NPDES (mostly remaining in Part 122).

-- Part 123 of the Consolidated Permit Regulations is split into portions applicable specifically to RCRA (new Part 271), UIC (new Part 145), 404 (new Part 233), and NPDES (remaining in Part 123).

-- Part 124 of the Consolidated Permit Regulations remains applicable to all permit programs (RCRA, State 404 programs, UIC, NPDES, PSD) and is modified only as necessary to revise the cross-references to former Parts 122 and 123.

DATES: Effective date: April 1, 1983, except for those portions of §§ 122.2, 122.21, and 122.29 that are suspended.

*Comment date:* To assist EPA in correcting typographical errors, incorrect cross-references and similar technical errors, submit comments of a technical and nonsubstantive nature on the final regulations on or before May 31, 1983.

ADDRESS: Address comments of a technical and nonsubstantive nature to: John Chamberlin, PM-220, U.S. Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: The following individuals at the U.S. Environmental Protection Agency, Washington, D.C. 20460:

-- On RCRA issues -- Deborah Wolpe, Office of Solid Waste (WH-563); (202) 382-4754;

-- On UIC issues -- Thomas E. Belk; Office of Drinking Water (WH-550); (202) 426-3934;

-- On NPDES issues -- George Young, Permits Division (EN-336); (202) 426-4793;

-- On 404 issues -- Michael Privitera, Office of Federal Activities (A-104); (202)382-5053;

-- On issues relating to coordination among all the revisions to the Consolidated Permit Regulations for the President's Task Force on Regulatory Relief -- John Chamberlin, Office of Policy Analysis (PM-220); (202)382-2762.

**TEXT: SUPPLEMENTARY INFORMATION:**

**I. Background**

On May 19, 1980, EPA promulgated the Consolidated Permit Regulations (CPR) governing five separate permit programs (40 CFR Parts 122-124, 45 FR 33290-33588). The five permit programs covered by the CPR are: the Hazardous Waste Management (HWM) program under Subtitle C of the Resource Conservation and Recovery Act (RCRA); the Underground Injection Control (UIC) program under Part C of the Safe Drinking Water Act; the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Clean Water Act; the state "dredge or fill" program under Section 404 of the Clean Water Act; and the Prevention of Significant Deterioration (PSD) program under regulations implementing Section 165 of the Clean Air Act.

Part 122 established definitions and basic permit requirements for EPA-administered RCRA, UIC, and NPDES programs. It also provided certain requirements applicable to state programs, including state 404 programs, but only to the extent Part 123 explicitly referred to Part 122 requirements. Part 122 spelled out in detail who must apply for a permit; contents of the applications; what conditions must be incorporated into permits; when permits may be revised, reissued, or terminated; and other requirements.

Part 123 established the requirements for state programs operated in lieu of EPA, after a program has received the approval of the Administrator. In addition to the RCRA hazardous waste, UIC, and NPDES programs, Part 123 governed state Section 404 programs for discharges of dredged or fill material into certain waters of the United States. After receiving the approval of the Administrator, a state may issue Section 404 permits, in lieu of the United States Army Corps of Engineers, basically in so called "Phase II and III" waters (sometimes referred to as traditionally non-navigable waters). In addition, Part 123 contained the procedures for EPA approval, revision, and withdrawal of a state program.

Part 124 established the common procedures to be followed in making permit decisions under the RCRA hazardous waste, UIC, PSD, and NPDES programs. It included procedures for public participation, for consolidated review and issuance of two or more permits to the same facility or activity, and for appealing permit decisions. Most requirements in Part 124 are only applicable where EPA is the permit-issuing authority. However, Part 123 requires states to comply with some of the Part 124 provisions, such as the basic public participation requirements of permit issuance.

Technical regulations containing requirements and criteria which apply to decisionmaking under the RCRA, UIC, NPDES, 404, and PSD programs were developed separately and do not appear in Parts 122-124. These other regulations set the substantive standards for the contents of permits issued pursuant to Parts 122-124 and provide some of the technical bases for determining the adequacy of state programs and individual permit decisions.

In the CPR, the Agency intended to encourage consolidated permitting in three ways:

(1) It adopted procedures to allow coordinated processing of multiple permits for a single facility. A single short application form was developed to provide basic information needed by all permit programs. Procedures were established to allow joint public notice, hearings, and issuance for multiple permits.

(2) It established uniform procedures and permit requirements across EPA permit programs to provide more consistency and predictability to the regulated community. We hope that an applicant who had obtained one EPA permit would find it easier to obtain other EPA permits by following similar procedures and meeting similar requirements.

(3) The regulations adopted a consolidated format. They interspersed requirements for one permit program among requirements for other permit programs. The regulations were organized both by topic (e.g. who applies for a permit, or standard permit conditions) and by permit program. For the most part, an effort was made to describe fully the requirements on a topic to the extent that the requirements were common across permit programs, and then subsequently to describe program-specific variations on the topic.

Subsequent to promulgation of the CPR, industry, states, and other interested parties have extensively criticized them. Petitioners representing major industrial trade associations, several of their member companies, the Natural Resources Defense Council, several states, and others filed petitions for judicial review of the regulations. Ultimately all petitions were consolidated in the U.S. Court of Appeals for the District of Columbia (*NRDC v. EPA*, No. 80-1607 and consolidated cases, filed June 2, 1980). Amendments resulting from this litigation are discussed in Section II of this preamble.

In addition, many individuals, including some of EPA's own regional officials charged with implementing the CRP, complained that the regulations were excessively complex and difficult to understand and to implement.

Consequently, the President's Task Force on Regulatory Relief designated the CPR as one of seven EPA regulations for Agency Review. Since late 1981 the Agency has been re-assessing these regulations with the following objectives in mind:

- Reduce the burden the regulations impose in terms of monitoring, recordkeeping, testing, reporting, and general paperwork.

- Increase the flexibility with which EPA can transfer permitting responsibilities to the states.

- Provide the Agency and states with more efficient ways of managing permitting workloads.

- Settle the litigation outstanding against the regulations.

- Make the regulations easier to use and less complex.

In general, the Agency has not found the benefits of permit consolidation, in any of the three senses listed above, to be as extensive as expected. Consolidated processing of multiple permits has been very rare. The fact that the various permit programs regulate inherently different activities and thus must impose generally different sorts of requirements has limited commonalities across permit programs. Finally, the consolidated format of the regulations has made them unnecessarily difficult to use.

For example, the consolidated format for Part 122 tended to make an applicant interested in meeting the

requirements for a single permit do two undesirable things:

- Read unrelated material pertaining to other permits not of interest to him; and
- Flip back and forth between two subparts of the regulations.

Although Subpart A contained mostly material common to all permit programs, it also contained material applicable to individual programs. That material proved to be distracting. In addition, the frequent necessity to proceed back and forth between Subpart A and Subpart B, C, or D caused confusion. Part 123 (state program requirements) of the CPR was organized similarly -- it too tended to make an individual or state interested in a single permit program read irrelevant material and flip back and forth between subparts.

Today's deconsolidation is intended to correct the problems created by the consolidated format. It will also make it easier to implement other, more substantive changes under consideration to meet our objective of providing regulatory relief.

## II. Relationship of This Promulgation to Other Changes in the CPR

Today's promulgation of "deconsolidated" regulations is only one of several steps we have taken or will take, to meet our regulatory relief objectives. The Agency has already completed two rule-makings to meet these objectives:

(1) Amendments dealing with issues addressed in the settlement agreement on the UIC-related issues of the CPR were promulgated in the Federal Register on August 27 1981 (46 FR 43156) and on February 3, 1982 (47 FR 4992).

(2) Technical amendments dealing with some of the issues addressed in the settlement agreement on the RCRA-related issues of the CPR were promulgated on April 8, 1982 (47 FR 15304).

These changes are reflected in today's deconsolidated regulations.

In addition, the Agency has proposed other regulatory changes:

(1) Amendments dealing with nearly all of the issues addressed in the settlement agreement on the NPDES-related issues of the CPR were proposed on November 18, 1982 (47 FR 52072).

(2) An amendment dealing with one of the issues addressed in the settlement agreement on the RCRA-related issues in the CPR was proposed on July 23, 1982 (47 FR 32038).

(3) Amendments dealing with issues addressed in the settlement agreement that were common to more than one permit program (the "common issues settlement") and 3 issues specific to the NPDES program were proposed on June 14, 1982 (47 FR 25546).

The Agency plans to propose more changes to the deconsolidated CPR over the next few months:

(1) Additional changes addressing the remaining issues dealt with in the settlement agreement on the RCRA-related issues in the CPR.

(2) Substantive changes to reform the NPDES program beyond those changes resulting from litigation, including final action on several provisions of the NPDES regulations which are currently suspended.

(3) Substantive changes to encourage assumption of the 404 permit program by states.

(4) EPA may also propose a set of changes to streamline the permitting procedures common to all programs found in Part 124.

These proposed changes will be reflected in the appropriate program regulations when rulemaking is complete.

The Agency believes that these changes will respond to nearly all of the criticisms that have been directed against the CPR. The regulations that result should be substantially less onerous for all concerned -- permittees, permittees, states, citizens, and EPA -- and will only very minimally, if at all, reduce the environmental protection that the regulations are intended to achieve.

### III. Description of Today's Amendments

In today's amendments, we are simply revising the consolidated format of the regulations. We are deconsolidating Part 122 (permit requirements) and Part 123 (state program requirements) of the CPR. We are leaving Part 124 (common permitting procedures) in its current consolidated format. Each part of the new regulations (122, 123, 144, 145, 233, 270, 271) will pertain solely to one permit program. The reader interested in only one permit program will not have to read irrelevant material pertaining to another program. Furthermore, EPA has attempted to order the subparts within each part in a logical sequence so that reading can be done sequentially.

Today's amendments simply reiterate the existing content of the regulations in a new format, with two narrow exceptions. First, several provisions have been deleted because they duplicate other provisions in the regulations or explain the consolidated format of the regulations and thus are no longer necessary. Deleted provisions are identified in the tables in the Appendix. Second, a few technical amendments have been made. They are described below.

In addition to the organizational changes resulting from deconsolidating, the Agency has made minor wording changes to UIC permitting requirements in selected sections of Part 144 (old Part 122). These changes essentially involve amending language to clarify the scope and enforceability of the procedural requirements which were previously outlined in 40 CFR Part 122, but they in no way extend the scope of the regulations. For example, in several sections the language has been changed from an indirect description of what standard a program must require an owner/operator meet, to language that simply states that an owner/operator "is required" to meet the standard. These minor wording changes, in addition to making the existing requirements more specific, will also enable EPA, where appropriate, to incorporate these regulations by reference directly into each federally implemented program the Agency promulgates, since the requirements will be couched in language that makes them directly enforceable against owner/operators.

The language changes do not alter the fact, however, that the requirements of Parts 144 and 145 are simply minimum requirements for all UIC programs. The old regulations in § 122.1(b)(1)(i) and § 122.31(a) have always made clear that the regulations were to serve as minimum requirements for EPA administered programs as well as approved state programs. These regulations do not impose requirements directly on owner/operators. The requirements set forth in these regulations will become binding on owner/operators only when they are included in a specific state program. Each state program will be approved (in the case of a state administered program) or promulgated (in the case of an EPA administered program) pursuant to appropriate procedural requirements.

The Agency has also made a minor technical change in the § 404 permitting requirements at § 233.18, Confidentiality of Information. In the existing regulations, the denial of request for confidentiality of the application form and the permit appears only in the NPDES section; it should have also appeared in the 404-specific section in accordance with Section 404(o) of the Clean Water Act. This technical change in today's regulations corrects that omission.

The Agency has also incorporated into today's regulations previously issued suspensions of several provisions of

the NPDES permitting requirements. The text of these suspensions, and the date of their original issuance, are indicated at the end of those sections of the regulations where the suspended portions are located.

The first two suspensions affect definitions found in § 122.2. On July 21, 1980, the last sentence of the definition of "waters of the United States, " which affects the exclusion of certain waste treatment systems from the definition of waters of the U.S., was suspended. On October 15, 1980, the definition of "new discharger" was suspended only as it applies to offshore mobile drilling rigs operating in areas other than those classified as environmentally sensitive.

Several suspensions have been made which limit the mandatory testing requirements of the NPDES application form 2C for primary industry categories. These suspensions are explained in detail in the notes following § 122.21, as well as the revised Table I of Appendix A to Part 122. In addition, portions of the footnotes to the table in § 122.21(d)(2), which explain the requirements for submission of applications and accompanying effluent data, have been suspended. This suspension is explained in note 5 following § 122.21.

Also, paragraphs (b)(1) and (b)(2) of § 122.29 have been suspended. These sections explain the difference between a new source and a modification of an existing source.

Final Agency action on each of these suspensions will be taken in subsequent Agency rulemakings. For example, on June 14, 1982, at FR 25526, *et seq.*, EPA proposed amendments to the "new discharger" definition as it affects mobile drilling rigs. The suspension of the definition made on October 15, 1980 will be withdrawn once final regulations on this proposal are published.

Finally, the Agency has also made several minor corrections to RCRA Parts 270 and 271.

Reorganization and renumbering of old Parts 122 and 123 necessitates revising the cross-references to former Parts 122 and 123 found elsewhere in the Code of Federal Regulations. Cross-references have thus been revised in 40 CFR Parts 124, 125, 146, 260, 261, 262, 263, 264, and 265.

As an appendix to this preamble, EPA has prepared a table illustrating how the Agency has reorganized the CPR. Note that since the Agency is only reorganizing the CPR, we are making no changes to any of the permit application forms that were published with the regulations. These forms remain in effect and we are not reprinting them here. Also note that since the Agency is not now modifying Part 124 of the regulations, the procedures of that Part allowing consolidated processing of applications for multiple permits remain in effect. As indicated previously, EPA is considering separate rulemaking to revise Part 124.

#### IV. Effective Date and Final Promulgation

This promulgation does not change the substance of the regulations at all; it merely changes their location in the Code of Federal Regulations. Accordingly, we are proceeding directly to promulgation without previously having proposed the regulation. EPA further believes that this is not the type of regulation that Congress had in mind when it provided a delay between the promulgation and the effective date of revisions to regulations. Making the changed format effective immediately will benefit those who use the regulation. Consequently, EPA believes it has good cause to make these rules effective immediately.

#### VI. Executive Order 12291

This regulation is not major because it will not result in an annual effect on the economy of \$100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of the U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. The regulation merely changes the location of the permit and state authorization requirements in the Code of Federal Regulations.

EPA submitted this rule to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available through: John Chamberlin, PM-220, U.S. Environmental Protection Agency, Washington, D.C.

#### V. Regulatory Flexibility Act

Today's promulgation does not change any substantive requirements of the permitting regulations.

Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects

##### *40 CFR Part 122*

Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control, Confidential business information.

##### *40 CFR Part 123*

Indians -- lands, Reporting and recordkeeping requirements, Water pollution control, Intergovernmental relations, Penalties, Confidential business information.

##### *40 CFR Part 124*

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Indians -- lands.

##### *40 CFR Part 125*

Water pollution control, Waste treatment and disposal.

##### *40 CFR Part 144*

Administrative practice and procedure, Reporting and recordkeeping requirements, Confidential business information, Water supply.

##### *40 CFR Part 145*

Indians -- lands, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply.

##### *40 CFR Part 146*

Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water supply.

*40 CFR Part 233*

Administrative practice and procedure, Reporting and recordkeeping requirements, Confidential business information, Water supply, Indians -- lands, Intergovernmental relations, Penalties, Confidential business information.

*40 CFR Part 260*

Administrative practice and procedure, Confidential business information, Hazardous materials, Waste treatment and disposal.

*40 CFR Part 261*

Hazardous materials, Waste treatment and disposal, Recycling.

*40 CFR Part 262*

Hazardous materials, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Waste treatment and disposal.

*40 CFR Part 263*

Hazardous materials transportation, Waste treatment and disposal.

*40 CFR Part 264*

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal.

*40 CFR Part 265*

Hazardous materials, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Waste treatment and disposal, Water supply.

*40 CFR Part 270*

Administrative practice and procedure, Reporting and recordkeeping requirements, Hazardous materials, Waste treatments and disposal, Water pollution control, Water supply, Confidential business information.

*40 CFR Part 271*

Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.



Dated: March 16, 1983.

John W. Hernandez,

Acting Administrator.

Authority: Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act: 42 U.S.C. 6905, 6912, 6925, 6927, 6974.

#### Appendix

This appendix describes the reorganization of former Parts 122 and 123. Four tables follow -- one for each program: NPDES, RCRA, UIC, 404. Each table lists all provisions of former Parts 122 and 123 applicable to the particular program and the new location at which the provisions are now presented.

#### NPDES Program

Below is a list of the NPDES-related sections in former Parts 122 and 123 and their corresponding sections in new Parts 122 and 123.

Name and old	New
What are the consolidated permit regulations?	
§ 122.1	
(a)	122.1(a).
(b)	122.1(c).
(c)	122.1(d).
(d)	122.1(g).
(e)	122.1(e).
(f)	122.1(f).
Purpose and scope of Part 122	
§ 122.2	
(a)	Removed.
(b)	Removed.
Definitions	
§ 122.3	122.2.
Application for a permit	
§ 122.4	
(a)	122.21(a).
(b)	122.21(b).
(c)	122.21(e).

(d)	122.21(f).
(e)	122.21(o).
Continuation of expiring permits	
§ 122.5	122.6.
Signatories to permit applications and reports	
§ 122.6	122.22.
Conditions applicable to all permits	
§ 122.7	122.41. (All sections are same paragraphs.)
Establishing permit conditions	
§ 122.8	122.43.
Duration of permits	
§ 122.9	
(a)	122.46(a).
(b)	Removed.
(c)	Removed.
(d)	122.46(b).
(e)	122.46(c).
Schedules of compliance	
§ 122.10	122.47
Requirements for recording and reporting of monitoring results	
§ 122.11	122.48.
Considerations under Federal law	
§ 122.12	122.47.
Effect of a permit	
§ 122.13	122.5
Transfer of permits	
§ 122.14	122.61
Modification or revocation and reissuance of permits	
§ 122.15	122.62.
(a)(5)(i)	122.62(a)(5).
(a)(5) (ii)-(xi)	122.62(a) (6)-(15).
(a)(6)	Removed.
Termination of permits	
§ 122.16	122.64.
Minor modifications of permits	
§ 122.17	122.63.

(g)	(e).
Noncompliance and program reporting by the Director	
§ 122.18	123.45.
(b)	Removed.
(c)	123.45(b).
(d)	Removed.
(e)	123.45(c).
Confidentiality of information	
§ 122.19	122.7.
Purpose and scope of Subpart D	
§ 122.51	
(a)	Removed.
(b)	122.1(g).
(c)(1)	122.1(b).
(c)(2)	122.3.
Prohibitions	
§ 122.52	122.4.
Application for a permit	
§ 122.53	
(a)	122.21(a).
(b)	122.21(c).
(c)	122.21(d).
(d)	122.21(g).
(e)	122.21(h).
(f)	122.21(i).
(g)	122.21(j).
(h)	122.21(k).
(i)	122.21(l).
(j)	122.21(m).
(k)	122.21(n).
Concentrated animal feeding opera- tions	
§ 122.54	122.23.
Concentrated aquatic animal produc- tion facilities	
§ 122.55	122.24.
Aquaculture projects	
§ 122.56	122.25.

## Separate storm sewers

§ 122.57 122.26.

## Silvicultural activities

§ 122.58 122.27.

## General permits

§ 122.59 122.28.

Additional conditions applicable to all  
NPDES permits

§ 122.60 122.41.

- (a) 122.41(a).
- (b) 122.41(c).
- (c) 122.41(j)(4), (5).
- (d) 122.41(k).
- (e) 122.41(l)(3).
- (f) 122.41(l)(6).
- (g) 122.41(m).
- (h) 122.41(n).

Additional conditions applicable to  
specified categories of NPDES permits

§ 122.61 122.42.

## Establishing NPDES permit conditions

§ 122.62 122.44.

## Calculating NPDES permit conditions

§ 122.63 122.45.

## Duration of certain NPDES permits

§ 122.64

- (a) 122.46(d).
- (b) 122.46(e).
- (c) 122.46(f).

Disposal of pollutants into wells, into  
publicly owned treatment works or by  
land application

§ 122.65 122.50.

## New sources and new dischargers

§ 122.66 122.29.

## Purpose and scope

§ 123.1

- (a) 123.1(a), (c).
- (b) Removed.

(c)	Removed.
(d)	Removed.
(e)	123.1(e).
(f)	123.1(c).
(g)	123.1(d).
(h)	123.1(f).
(i)	Removed.
(j)	123.1(h).
(k)	123.1(i).
Definitions	
§ 123.2	123.2.
Elements of a program submission	
§ 123.3	123.21.
Program description	
§ 123.4	123.22.
Attorney General's statement	
§ 123.5	123.23.
Memorandum of agreement with regional administrator	
§ 123.6	
(e)	123.24(d).
(g)	123.24(e).
Requirements for permitting	
§ 123.7	123.25.
(a)(1)	(a)(4).
(2)	(5).
(3)	(12).
(4)	(14).
(5)	(17).
(6)	(18).
(7)	(19).
(8)	(2).
(9)	(21).
(10)	(22).
(11)	(23).
(12)	§ 123.45.
(13)	123.25(a)(3).
(14)	(24).

(15)	(25).
(16)	(26).
(17)	(27).
(18)	(28).
(19)	(29).
(20)	(30).
(21)	(31).
(b)	Removed.
(c)	Removed.
(d)(1)	(a)(1).
(2)	(4).
(3)	(6).
(4)	(7).
(5)	(8).
(6)	(9).
(7)	(10).
(8)	(11).
(9)	(12).
(10)	(13).
(11)	(15).
(12)	(16).
(13)	(17).
(14)	(20).
(15)	(32).
(16)	(33).
(17)	(34).
(18)	(36).
(19)	(37).
(e)	(b).

Requirements for compliance evaluation programs

§ 123.8	123.26.
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Requirements for enforcement authority

§ 123.9	123.27.
(a)(3)(iii)(A)	(a)(3)(i).
(a)(3)(iii)(B)	(a)(3)(ii).
(a)(3)(iii)(C)	(a)(3)(iii).

## Sharing of information

§ 123.10 123.41.

## Coordination with other programs

§ 123.11 123.3.

## Approval process

§ 123.12 123.61.

## Procedures for revision of State programs

§ 123.13

(g) 123.62(e).

## Criteria for withdrawal of State programs

§ 123.14 123.63.

## Procedures for withdrawal of State programs

§ 123.15 123.64.

## Purpose and scope

§ 123.71

(a) 123.1(a).

(b) 123.1(b).

(c) 123.1(g).

(d) 123.1(d).

## Control of disposal of pollutants into wells

§ 123.72 123.28.

## Receipt and use of Federal information

§ 123.73 123.42.

## Transmission of information to EPA

§ 123.74 123.43.

## EPA review of and objections to State permits

§ 123.75 123.44.

## Prohibitions

§ 123.76 123.29.

## Approval process

§ 123.77 123.61.

## UIC Program

Below is a list of the UIC related sections in Parts 122 and 123 and their corresponding sections in Parts 144 and 145: Part 122=144.

Name and old	New
What are the consolidated regulations	
§ 122.1	§ 144.1.
Purpose and scope of part 122	
§ 122.2	§ 144.1.
Definitions	
§ 122.3	§ 144.3.
Application for a permit	
§ 122.4	§ 144.31.
§ 122.4(a)	Removed.
§ 122.4(b)	§ 144.31(b).
§ 122.4(c)	§ 144.31(d).
§ 122.4(d)	§ 144.31(e).
§ 122.4(e)	§ 144.31(f).
Continuation of expiring permits	
§ 122.5	§ 144.37.
Signatories to permit applications and reports	
§ 122.6	§ 144.32.
Conditions applicable to all permits	
§ 122.7	§ 144.51(a)-(1).
Establishing permit conditions	
§ 122.8	
§ 122.8(a)	§ 144.52(a).
§ 122.8(b)(1)-(3)	§ 144.52(b)(1)-(3).
§ 122.8(c)	§ 144.52(c).
Duration of permits	
§ 122.9	§ 144.36.
§ 122.9(c)	§ 144.36(a).
§ 122.9(d)	§ 144.36(b).
§ 122.9(e)	§ 144.36(c).
Schedule of compliance	
§ 122.10	§ 144.53.
§ 122.10(a)(1)(ii)	§ 144.53(a)(1)(i).
§ 122.10(a)(3)	§ 144.53(a)(2).



§ 122.10(a)(4)	§ 144.53(a)(3).
Requirements for recording and reporting of monitoring results	
§ 122.11	§ 144.54.
Considerations under Federal law	
§ 122.12	§ 144.4.
Effects of a permit	
§ 122.13	§ 144.35.
Transfer of permits	
§ 122.14	§ 144.38.
Modification of revocation and reissuance of permits	
§ 122.15	§ 144.39.
Termination of permits	
§ 122.16	§ 144.40.
Minor modification of permits	
§ 122.17	§ 144.41.
§ 122.17(f)(1)	§ 144.41(e).
§ 122.17(f)(2))	§ 144.41(f).
§ 122.17(f)(3))	§ 144.41(g).
Noncompliance and program reporting by the director	
§ 122.18	§ 144.8.
§ 122.18(c)	§ 144.8(b).
§ 122.18(c)(4)	§ 144.8(b)(2).
§ 122.18(e)	§ 144.8(c).
Confidentiality of information	
§ 122.19	§ 144.5.
Purpose and scope of subpart C (rewritten)	
§ 122.31	§ 144.1.
Classification of wells	
§ 122.32	§ 144.6.
Prohibition of unauthorized injection	
§ 122.33	§ 144.11.
Prohibition of movement of fluid into underground sources of drinking water	
§ 122.34	§ 144.12.

Identification of underground sources  
of drinking water and exempted  
aquifers

§ 122.35 § 144.7.

Elimination of certain class IV wells

§ 122.36 § 144.13.

Authorization of underground injection by rule

§ 122.37

§ 122.37(a)(1) § 144.21.

§ 122.37(a)(2) § 144.22.

§ 122.37(a)(3) § 144.23.

§ 122.37(a)(4) § 144.24.

§ 122.37(b) § 144.25.

§ 122.37(c) § 144.26.

§ 122.37(d) § 144.15.

Application for a permit; authorization by permit

§ 122.38

§ 122.38(a) § 144.31(a).

§ 122.38(b) § 144.31(c).

§ 122.38(c) § 144.31(g).

Area permits

§ 122.39 § 144.33.

Emergency permits

§ 122.40 § 144.34.

Additional conditions applicable to  
all UIC permits

§ 122.41

§ 122.41(a) § 144.51(a).

§ 122.41(b) § 144.51(j)(2)(ii).

§ 122.41(c) § 144.51(m).

§ 122.41(d) § 144.51(1)(6).

§ 122.41(e) § 144.51(n).

Establishing UIC permit conditions

§ 122.42

§ 122.42(a) § 144.52(a)(1).

§ 122.42(b) § 144.52(a)(2).

§ 122.42(c) § 144.52(a)(3).

§ 122.42(d)	§ 144.52(a)(4).
§ 122.42(e)	§ 144.52(a)(5).
§ 122.42(f)	§ 144.52(a)(6).
§ 122.42(g)	§ 144.52(a)(7).
§ 122.42(h)	§ 144.52(a)(8).
§ 122.42(i)	§ 144.52(b)(1).

Waiver of requirements by director

§ 122.43	§ 144.16.
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Corrective action

§ 122.44	§ 144.55.
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Requirements for wells injecting hazardous waste

§ 122.45	§ 144.14.
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Promulgation of class II programs for Indian lands

§ 122.46	§ 144.2.
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Purpose and scope

§ 123.1	
§ 123.1(a)	§ 145.1(a).
§ 123.1(b)	Deleted.
§ 123.1(c)	§ 145.1(b).
§ 123.1(d)	§ 145.1(c).
§ 123.1(e)	§ 145.1(d).
§ 123.1(f)	§ 145.31(d).
§ 123.1(g)	§ 145.21(e).
§ 123.1(h)	§ 145.1(f).
§ 123.1(i)	Deleted.
§ 123.1(j)	§ 145.21(f).
§ 123.1(k)	§ 145.1(g).

Definitions

§ 123.2	§ 145.2.
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Elements of a program submission

§ 123.3	§ 145.21.
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Program description

§ 123.4	§ 145.22.
§ 123.4(g)	§ 145.22(f).

Attorney General's statement

§ 123.5	§ 145.23.
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Memorandum of agreement with the  
regional administrator

§ 123.6 § 145.24.

Requirements for permitting

§ 123.7 § 145.11.

§ 123.7(a)(1)-(21) § 145.11(a)(1)-(21).

§ 123.7(c)(1)-(12) § 145.11(a)(22)-(33).

Requirements for compliance evaluation programs

§ 123.8 § 145.12.

Requirements for enforcement authority

§ 123.9 § 145.13.

§ 123.9(a)(3)(ii)(A) § 145.13(a)(3)(i).

§ 123.9(a)(3)(ii)(B) § 145.13(a)(3)(ii).

Sharing of information

§ 123.10 § 145.14.

Coordination with other programs

§ 123.11 Removed.

Approval process

§ 123.12 § 145.31.

Procedure for revision of State programs

§ 123.13 § 145.32.

§ 123.13(f) § 145.32(e).

Criteria for withdrawal of State programs

§ 123.14 § 145.33.

Procedures for withdrawal of State programs

§ 123.15 § 145.34.

§ 123.15(a) § 145.34(a).

Purpose and scope of subpart C

§ 123.51 § 145.1.

§ 123.51(a) Deleted.

§ 123.51(b) § 145.21(a).

§ 123.51(c) § 145.21(c).

§ 123.51(d) § 145.21(d).

§ 123.51(e) § 145.21(e).

## Requirement to obtain a permit

§ 123.52 § 145.11(a)(27).

## Progress reports

§ 123.53 § 145.21(b).

## Approval process

§ 123.54 § 145.31.

§ 123.54(a)-(c) § 145.31(a)-(c).

§ 123.54(d) § 145.31(e).

## Procedures for withdrawal of State

## UIC programs

§ 123.55 § 145.34.

§ 123.55(a) § 145.34(b)(1).

§ 123.55(b) § 145.34(b)(2).

§ 123.55(c) § 145.34(b)(3).

## 404 Program

Below is a list of the 404 related sections in Parts 122 and 123 and their corresponding sections in Part 233.

## Old name

## New

## What are the consolidated permit regulations? (Purpose and scope of Part 233).

122.1	233.1.
122.1(a)	233.1(a).
122.1(b)(1) (i)-(iii)	233.1(b) (1)-(4).
122.1(b) (2)-(4)	Removed.
122.1(c) (1)-(2)	233.1(c) (1)-(2).
122.1(d)	Removed.
122.1(e)	233.1(d).
122.1(f)	233.1(e).

## Purpose and scope

122.2	233.2.
122.2(a)	233.2.
122.2(b)	Removed.

## Definitions

122.3	233.3.
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## Application for a permit

122.4	233.4.
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122.4(a)	233.4(b).
122.4(b)	233.4(c).
122.4(c)	233.4(d).
122.4(d)	233.4(e).
122.4(e)	233.4(f).
Continuation of expiring permits	
122.5	233.5.
122.5 (a)-(c)	Removed.
122.5(d)	233.5.
Signatories to permit application and reports	
122.6	233.6.
122.6 (a)-(d)	233.6 (a)-(d).
Conditions applicable to all permits	
122.7	233.7.
122.7 (a)-(l)	233.7 (a)-(l).
Establishing permit conditions	
122.8	233.8.
122.8 (a)-(b)	233.8 (a)-(b).
122.8(c)	233.8(d).
Duration of permits	
122.9	233.9.
122.9(a)	233.9(a).
122.9 (b)-(c)	Removed.
122.9 (d)-(e)	233.9 (b)-(c).
Schedules of compliance	
122.10	233.10.
122.10(a)	233.10(a).
122.10(a)(1)	233.10(a)(1).
122.10(a)(1) (i) and (ii)	Removed.
122.10(a)(2)	Removed.
122.10(a)(3)	233.10(a)(2).
122.10(a)(4)	233.10(a)(3).
122.10(b)	Removed.
Requirements for recording and reporting of monitoring results	
122.11	233.11.
122.11 (a)-(c)	233.11 (a)-(c).
Consideration under Federal law	

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122.12	Removed.
Effect of a permit	
122.13	233.12.
122.13 (a)-(b)	233.12 (a)-(b).
122.13(c)	Removed.
Transfer of permits	
122.14	233.13.
122.14(a)	233.13.
122.14(b)	Removed.
Modification or revocation and reissuance of permits	
122.15	233.14.
122.15(a)(1)-(2)	233.14(a)(1)-(2).
122.15(a)(3)(i)-(ii)	233.14(a)(3)(i)-(ii).
122.15(a)(3)(iii)	Removed.
122.15(a)(4)	233.14(a)(4).
122.15(a)(5)	Removed.
122.15(a)(6)	233.14(a)(5).
122.15(b)	233.14(b).
122.15(c)	Removed.
Termination of permits	
122.16	233.15.
122.16(a)(1)	233.15(a).
122.16(a)(2)	233.15(b).
122.16(a)(3)	233.15(c).
122.16(a)(4)	233.15(d).
122.16(b)	Removed.
Minor modification of permits	
122.17	233.16.
122.17(a)-(d)	233.16(a)-(d).
122.17(e)-(g)	Removed.
122.17(h)	233.16(e).
Noncompliance and program reporting by the director	
122.18	233.17.
122.18(a)	Removed.
122.18(b)	233.17(a).
122.18(c)	Removed.
122.18(d)	233.17(b).
122.18(e)	233.17(c).

## Confidentiality of information

122.19	233.18.
122.19(a)	Removed.
122.19(b)(1)	233.18(a)(1).
122.19(b)(2)-(3)	Removed.
122.19(b)(4)	233.18(a)(3).
122.19(c)-(d)	Removed.

## Purpose and scope

123.1	233.20.
123.1(a)	233.20(a).
123.1(b)	Removed.
123.1(c)	233.20(b).
123.1(d)	233.20(c).
123.1(e)	233.20(d).
123.1(f)	233.20(e).
123.1(g)	233.20(f).
123.1(h)	233.20(g).
123.1(i)	233.20(h).
123.1(j)	233.20(i).
123.1(k)	233.20(j).

## Definitions

123.2	Removed.
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## Elements of a program submission

123.3	233.21.
123.3(a)-(d)	233.21(a)-(d).

## Program description

123.4	233.22.
123.4(a)-(e)	233.22(a)-(e).
123.4(f)-(g)	Removed.
123.4(h)(1)-(8)	233.22(f)-(m).

## Attorney General's statement

123.5	233.23.
123.5(a)-(b)	233.23(a)-(b).
123.5(c)	Removed.
123.5(d)	233.23(c).

## Memorandum of agreement with the Regional Administrator

123.6	233.24.
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123.6(a)	233.24(a).
123.6(b)(1)	Removed.
123.6(b)(2)-(3)	233.24(b)(1)-(2).
123.6(b)(4)	233.24(b)(3.)
123.6(b)(5)	Removed.
123.6(b)(6)	233.24(b)(4.)
123.6(c)	233.24(c).
123.6(d)	Removed.
123.6(e)	Removed.
123.6(f)	233.24(d).
123.6(g)	233.24(e).
Requirements for permitting	
123.7	233.26.
123.7(a)	233.26(a).
123.7(b)-(d)	Removed.
123.7(e)	233.26(b).
Requirements for enforcement evaluation programs	
123.8	233.27.
123.8(a)-(d)	233.27(a)-(d).
123.8(e)	Removed.
Requirements for enforcement authority	
123.9	233.28.
123.9(a)(3)	233.28(a)(4).
123.9(a)(3)(i)-(ii)	Removed.
123.9(a)(3)(iii)	233.28(a)(4)(i).
Sharing of information	
123.10	233.29.
Coordination with other programs	
123.11	233.30.
Approval process	
123.12	233.31.
Procedures for revision of State programs	
123.13	233.32.
123.13(a)-(d)	233.32(a)-(d.)
123.13(e)-(g)	Removed.
123.13(h)	233.32(e).
Criteria for withdrawal of State programs	
123.14	233.33.

## Procedures for withdrawal of State programs

123.15 233.34.

## Purpose and scope

123.91

123.91(a) Removed.

123.91(b) Removed.

123.91(c) 233.20(i).

123.91(d) 233.37(d).

## Activities not requiring permits

123.92 233.35.

## Prohibitions

123.93 233.36.

## Applications for a permit

123.94 233.4.

123.94(a) 233.4(a).

123.94(b) 233.4(b).

123.94(c) 233.4(e).

## General permits

123.95 233.37.

## Emergency permits

123.96 233.38.

## Permit conditions

123.97 233.7.

123.97(a)-(d) 233.7(m)-(p).

## Establishing permit conditions

123.98 233.8.

123.98(a)-(g) 233.8(c)(1)-(7).

## Memorandum of agreement with the Secretary

123.99 233.25.

## Transmission of information to EPA and other Federal agencies

123.100 233.39.

## EPA review of and objections to State permits

123.101 233.40.

## Coordination requirements

123.102 233.41.

## Enforcement authority

123.103 233.28(a)(3)

## Approval process

123.104

233.31.

## Index of Changes to Parts 122 and 123

Below is a list of the RCRA related sections in Parts 122 and 123, and their corresponding sections in Parts 270 and 271:

## Part 122=Part 270

Name and old	New
What are the consolidated permit regulations?	
§ 122.1	270.1.
(a)(1)	(a)(1).
(a)(ii)-(e)	Removed.
Purpose and scope of Part 122	
§ 122.2	270.1.
(b)	Removed.
Definitions	
§ 122.3	270.2.
Application for a permit	
§ 122.4	270.10.
(a)-(c)	(a)-(c).
(d)	(d).
(d)(1)-(d)(4)	270.13(a)-(d).
(d)(5)	270.13(f).
(d)(6)-(d)(8)	270.13(k)-(m).
(e)	270.10(i).
Continuation of expiring permits	
§ 122.5	270.51.
Signatories to permit applications and reports	
§ 122.6	270.11.
Conditions applicable to all permits	
§ 122.7	270.30.
(1)(7)-(1)(8)	(1)(10)-(1)(11).
Establishing permit conditions	

§ 122.8	270.32.
(a)-(b)	(a).
(b)(2)-(3)	(c)-(d).
(c)	(e).
Duration of permits	
§ 122.9	270.50.
(b)	(a).
(d)	(b).
(e)	(c).
Schedules of compliance	
§ 122.10	270.33.
(a)(3)-(4)	(a)(2)-(3).
Requirements for recording and reporting of monitoring results	
§ 122.11	270.31.
Consideration under Federal law	
§ 122.12	270.3.
Effect of a permit	
§ 122.13	270.4.
Transfer of permits	
§ 122.14	270.40.
Modification or revocation and reissuance of permits	
§ 122.15	270.41.
(a)(7)	(a)(5).
Termination of permits	
§ 122.16	270.43.
Minor modifications of permits	
§ 122.17	270.42.
(e)(1)-(8)	(e)-(n).
Noncompliance and program reporting by the Director	
§ 122.18	270.5.
(c)	(b).
(c)(3)	(b)(2).
(e)	(c).
Confidentiality of information	
§ 122.19	270.12.
(b)(1)	(b).

## References

§ 122.20 270.6.

## Purpose and scope of Subpart B

§ 122.21 270.1.

(a) Removed.

(b)(1)-(b)(7) (a)(3).

(b)(8) (a)(2).

(c)-(d) (b)-(c).

(d)(2)(v) Removed.

(d)(2)(vi)-(viii) (c)(2)(v)-(vii).

## Application for a permit

§ 122.22 270.10.

(a)-(d) (e)-(h).

## Interim status

§ 122.23 270.70-270.73.

## Qualifying for interim status

(a) 270.70.

## Coverage

(b) 270.71(a).

## Changes during interim status

(c) 270.72.

## Interim status standards

(d) 270.71(b).

## Grounds for termination

(e) 270.73.

## Contents of Part A of the RCRA permit application

§ 122.24 270.13.

(a) (b).

(b) (e).

(c)-(g) (g)-(j).

## Contents of Part B of the RCRA permit application

§ 122.25 270.14-270.29.

(a) 270.14.

(a) (b).

(b)(1) 270.15.

(i)-(vi) (a)-(d).

(b)(2)	270.16.
(i)-(vi)	(a)-(f).
(b)(3)	270.17.
(i)-(ix)	(a)-(i).
(b)(4)	270.18.
(i)-(ix)	(a)-(i).
(b)(5)	270.19.
(i)-(iv)	(a)-(d).
(b)(6)	270.20.
(i)-(viii)	(a)-(h).
(b)(7)	270.21.
(i)-(ix)	(a)-(i).
(c)	270.14(c).
Permits by rule	
§ 122.26	270.60.
Short term permits	
§ 122.27	270.61-270.63.
Emergency permits	
(a)	270.61.
Hazardous waste incinerator permits	
(b)	270.62.
Permits for land treatment demonstra- tions	
(c)	270.63.
Additional conditions applicable to all RCRA permits	
§ 122.28	270.30.
(b)	(j)(2).
(c)	(1)(2).
(d)	(1)(6).
(e)(1)-(3)	(1)(7)-(9).
Establishing RCRA permit conditions	
§ 122.29	270.32(a)-(b).
Interim permits for UIC wells	
§ 122.30	270.64.

Name and old	New
Subpart A -- General Program Requirements	
Retitled: Requirements for final authorization.	
Purpose and scope	
§ 123.1	§ 271.1.
(a)(2)-(4)	Removed.
(b)	Removed.
(c)-(k)	(b)-(i).
Note	Removed.
Definitions	
§ 123.2	§ 271.2.
Elements of a program submission	
§ 123.3	§ 271.5.
Program description	
§ 123.4	§ 271.6.
(f)	Removed.
(f)(1)-(3)	(f)-(h).
(f)(4)	Removed.
(g) and (h)	Removed.
Attorney General's statement	
§ 123.5	§ 271.7.
(c) and (d)	Removed.
Memorandum of agreement	
§ 123.6	§ 271.8.
(b)(1)	(b)(6).
(b)(2)	(b)(7).
(b)(3)	(b)(2).
(b)(4)	(b)(3).
(b)(5)	(b)(8).
(b)(6)	(b)(11).
(d)	Removed.
(d)(1)	(b)(4).
(d)(2)	(b)(5).
(d)(3)	(b)(9).
(d)(4)	(b)(1).

(d)(5)	(b)(10).
(e)-(g)	Removed.
Requirements for permitting	
§ 123.7	§ 271.14.
(a)	Removed.
(a)(1)	(d).
(a)(2)	(e).
(a)(3)	(i).
(a)(4)	(k).
(a)(5)	(p).
(a)(6)	(l).
(a)(7)	(j).
(a)(8)	(b).
(a)(9)	(m).
(a)(10)	(n).
(a)(11)	(o).
(a)(12)	(c).
(a)(13)	(f).
(a)(14)-(21)	(t)-(aa).
(b)	Removed.
(b)(1)	(a).
(b)(2)	(d).
(b)(3)	(g).
(b)(4)	(h).
(b)(5)	(q).
(b)(6)	(r).
(b)(7)	(i).
(b)(8)	(k).
(b)(9)	(s).
Requirements for compliance evaluation program	
§ 123.8	§ 271.15.
(e)	Removed.
Requirements for enforcement authority	
§ 123.9	§ 271.16.
(a)(3)(i)	Removed.
(a)(3)(i)(A) and (B)	(a)(3)(i) and (ii).



(a)(3)(ii)	Removed.
(a)(3)(iii)	Removed.
Sharing of information	
§ 123.10	§ 271.17.
Coordination with other programs	
§ 123.11	§ 271.18.
Approval process	
§ 123.12	Removed.
Procedures for revision of State programs	
§ 123.13	§ 271.21.
(f)-(h)	Removed.
Criteria for withdrawal of State programs	
§ 123.14	§ 271.22.
Retitled: Procedures for withdrawing approval of State programs.	
Procedures for withdrawal of State programs	
§ 123.15	§ 271.23.
Retitled: Procedures for withdrawing approval of State programs.	
Subpart B -- Additional Requirements for State Hazardous Waste Programs	
Sections 123.31-123.39 are now included in Subpart A, as follows:	
Retitled: Availability of final authorization	
§ 123.31	§ 271.3.
(a)	Removed.
(b)-(e)	(a)-(d).
Consistency	
§ 123.32	§ 271.4.
Requirements for identification and listing of hazardous wastes	
§ 123.33	§ 271.9.
Requirements for generators of hazardous wastes	
§ 123.34	§ 271.10.
Requirements for transporters of hazardous wastes	

§ 123.35	§ 271.11.
Requirements for hazardous waste management facilities	
§ 123.36	§ 271.12.
Requirements with respect to permits and permit applications	
§ 123.37	§ 271.13.
EPA review of State permits	
§ 123.38	§ 271.19.
Approval process	
§ 123.39	§ 271.20
Subpart F -- Requirements for interim authorization of State hazardous waste programs	
Retitled: Subpart B -- Requirements for interim authorization	
Purpose and scope	
§ 123.121	§ 271.121.
Schedule	
§ 123.122	§ 271.122.
Elements of a program submission	
§ 123.123	§ 271.123.
Program description	
§ 123.124	§ 271.124.
Attorney General's statement	
§ 123.125	§ 271.125.
Memorandum of agreement	
§ 123.126	§ 271.126.
Authorization plan	
§ 123.127	§ 271.127.
Program requirements for interim authorization for phase I	
§ 123.128	§ 271.128.
Additional program requirements for interim authorization for phase II	
§ 123.129	§ 271.129.
Interstate movement of hazardous waste	
§ 123.130	§ 271.130.
Progress reports	

§ 123.131	§ 271.131.
Sharing of information	
§ 123.132	§ 271.132.
Coordination with other programs	
§ 123.133	§ 271.133.
EPA review of State permits	
§ 123.134	§ 271.134.
Approval process	
§ 123.135	§ 271.135
Withdrawal of State programs	
§ 123.136	§ 271.136.
Reversion of State programs	
§ 123.137	§ 271.137.

Part 122 is revised to read as follows:

PART 122 -- NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart A -- Definitions and General Program Requirements

Sec.

122.1 Purpose and Scope.

122.2 Definitions.

122.3 Exclusions.

122.4 Prohibitions (applicable to State NPDES Programs, see § 123.25).

122.5 Effect of a permit.

122.6 Continuation of expiring permits.

122.7 Confidentiality of information.

Subpart B -- Permit Application and Special NPDES Program Requirements

122.21 Application for a permit (applicable to State programs, see § 123.25).

122.22 Signatories to permit applications and reports (applicable to State programs, see § 123.25).

122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

122.24 Concentrated aquatic animal production facilities (applicable to State NPDES programs, see § 123.25).

122.25 Aquaculture projects (applicable to State NPDES programs, see § 123.25).

122.26 Separate storm sewers (applicable to State NPDES programs, see § 123.25).

122.27 Silvicultural activities (applicable to State NPDES programs, see § 123.25).

122.28 General permits (applicable to State NPDES programs, see § 123.25).

122.29 New sources and new discharges.

#### Subpart C -- Permit Conditions

122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

122.43 Establishing permit conditions (applicable to State programs, see § 123.25).

122.44 Establishing limitations, standards and other permit conditions (applicable to State NPDES programs, see § 123.25).

122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25).

122.46 Duration of permits (applicable to State programs, see § 123.25).

122.47 Schedules of compliance.

122.48 Requirements for recording and reporting of monitoring results (applicable to State programs, see § 123.25).

122.49 Considerations under Federal law.

122.50 Disposal of pollutants into wells, into publicly owned treatment works or by land application (applicable to State programs, see § 123.25).

Subpart D -- Transfer, modification, revocation and reissuance, and termination of permits

122.61 Transfer of permits (applicable to State programs, see § 123.25).

122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).

122.63 Minor modifications of permits.

122.64. Termination of permits (applicable to State programs, see § 123.25).

Authority: The Clean Water Act, 33 U.S.C. § 1251 *et seq.*

Appendix A -- NPDES Primary Industry Categories.

Appendix B -- Criteria for Determining a Concentrated Animal Feeding Operation ( § 122.23).

Appendix C -- Criteria for Determining a Concentrated Aquatic Animal Production Facility (122.24).

Appendix D -- NPDES Permit Application Testing Requirements (122.21).

Subpart A -- Definitions and General Program Requirements

§ 122.1 Purpose and scope.

(a) *Coverage.* (1) These regulations contain provisions for the *National Pollutant Discharge Elimination System* (NPDES) Program under sections 318, 402, and 405(a) of the *Clean Water Act* (CWA) ( Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, and Pub. L. 97-117; 33 U.S.C. 1251 *et seq.* ).

(2) These regulations cover basic EPA permitting requirements (Part 122), what a State must do to obtain approval to operate its program in lieu of a Federal program and minimum requirements for administering the approved State program (Part 123), and procedures for EPA processing of permit applications and appeals (Part 124). Part 124 is also applicable to other EPA permitting programs, as detailed in that Part.

(b) *Scope of the NPDES permit requirement.* (1) The NPDES program requires permits for the discharge of "pollutants" from any "point source" into "waters of the United States." The terms "pollutant", "point source" and "waters of the United States" are defined in § 122.2.

(2) The following are point sources requiring NPDES permits for discharges:

- (i) Concentrated animal feeding operations as defined in § 122.23;
- (ii) Concentrated aquatic animal production facilities as defined in § 122.24;
- (iii) Discharges into aquaculture projects as set forth in § 122.25;
- (iv) Discharges from separate storm sewers as set forth in § 122.26; and
- (v) Silvicultural point sources as defined in § 122.27.

(c) *State Programs.* Certain requirements set forth in Parts 122 and 124 are made applicable to approved State programs by reference in Part 123. These references are set forth in § 123.25. If a section or paragraph of Parts 122 or 124 is applicable to States, through reference in § 123.25, that fact is signaled by the following words at the end of the section or paragraph heading: (*applicable to State programs, see § 123.25*). If these words are absent, the section (or paragraph) applies only to EPA administered permits.

(d) *Relation to other requirements.* (1) *Permit application forms.* Applicants for EPA issued permits must submit their applications on EPA's permit application forms when available. Most of the information requested on these application forms is required by these regulations. The basic information required in the general form (Form 1) and the additional information required for NPDES applications (Forms 2a-d) are listed in § 122.21. Applicants for State issued permits must use State forms which must require at a minimum the information listed in these sections.

(2) *Technical regulations.* The NPDES permit program has separate additional regulations that contain technical requirements. These separate regulations are used by permit issuing authorities to determine what requirements must be placed in permits if they are issued. These separate regulations are located at 40 CFR Parts 125, 129, 133, 136 and 40 CFR subchapter N (Parts 400-460).

(e) *Public participation.* This rule establishes the requirements for public participation in EPA and State permit issuance and enforcement and related variance proceedings, and in the approval of State NPDES programs. These requirements carry out the purposes of the public participation requirements of 40 CFR Part 25 (Public Participation), and supersede the requirements of that Part as they apply to actions covered under Parts 122, 123, and 124.

(f) *State authorities.* Nothing in Parts 122, 123, or 124 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

(g) *Authority.* (1) Section 301(a) of CWA provides that "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful."

(2) Section 402(a)(1) of CWA provides in part that "The Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, \* \* \* upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act."

(3) Section 318(a) of CWA provides that "The Administrator is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision pursuant to section 402 of this Act."

(4) Section 405 of CWA provides, in part, that "Where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 212 of this Act (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under

section 402 of this Act."

(5) Sections 402(b), 318 (b) and (c), and 405(c) of CWA authorize EPA approval of State permit programs for discharges from point sources, discharges to aquaculture projects, and disposal of sewage sludge.

(6) Section 304(i) of CWA provides that the Administrator shall promulgate guidelines establishing uniform application forms and other minimum requirements for the acquisition of information from dischargers in approved States and establishing minimum procedural and other elements of approved State NPDES programs.

(7) Section 501(a) of CWA provides that "The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act."

(8) Section 101(e) of CWA provides that "Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes."

#### § 122.2 Definitions.

The following definitions apply to Parts 122, 123, and 124. Terms not defined in this section have the meaning given by CWA. When a defined term appears in a definition, the defined term is sometimes placed in quotation marks as an aid to readers.

*Administrator* means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

*Applicable standards and limitations* means all State, interstate, and Federal standards and limitations to which a "discharge" or a related activity is subject under the CWA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of CWA.

*Application* means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in "approved States," including any approved modifications or revisions.

*Approved program* or *approved State* means a State or interstate program which has been approved or authorized by EPA under Part 123.

*Average monthly discharge limitation* means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.

*Average weekly discharge limitation* means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week.

*Best management practices* ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States." BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

*BMPs* means "best management practices."

*Contiguous zone* means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

*Continuous discharge* means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

*CWA* means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483 and Pub. L. 97-117, 33 U.S.C. 1251 *et seq.*

*CWA and regulations* means the Clean Water Act (CWA) and applicable regulations promulgated thereunder. In the case of an approved State program, it includes State program requirements.

*Daily discharge* means the "discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the day.

*Direct discharge* means the "discharge of a pollutant."

*Director* means the Regional Administrator or the State Director, as the context requires, or an authorized representative. When there is no "approved State program," and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State program, "Director" normally means the State Director. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval, see § 123.1.) In such cases, the term "Director" means the Regional Administrator and not the State Director.

*Discharge* when used without qualification means the "discharge of a pollutant."

*Discharge of a pollutant* means:

(a) Any addition of any "pollutant" or combination of pollutants to "waters of the United States" from any "point source," or

(b) Any addition of any pollutant or combination of pollutants to the waters of the "contiguous zone" or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any "indirect discharger."

*Discharge Monitoring Report* ("DMR") means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

*DMR* means "Discharge Monitoring Report."



*Draft permit* means a document prepared under § 124.6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in § 124.5, are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in § 124.5, is not a "draft permit." A "proposed permit" is not a "draft permit."

*Effluent limitation* means any restriction imposed by the Director on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the United States," the waters of the "contiguous zone," or the ocean.

*Effluent limitations guidelines* means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise "effluent limitations."

*Environmental Protection Agency* ("EPA") means the United States Environmental Protection Agency.

*EPA* means the United States "Environmental Protection Agency."

*Facility or activity* means any NPDES "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

*General permit* means an NPDES "permit" issued under § 122.28 authorizing a category of discharges under the CWA within a geographical area.

*Hazardous substance* means any substance designated under 40 CFR Part 116 pursuant to section 311 of CWA.

*Indirect discharger* means a nondomestic discharger introducing "pollutants" to a "publicly owned treatment works."

*Interstate agency* means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the CWA and regulations.

*Major facility* means any NPDES "facility or activity" classified as such by the Regional Administrator, or, in the case of "approved State programs," the Regional Administrator in conjunction with the State Director.

*Maximum daily discharge limitation* means the highest allowable "daily discharge."

*Municipality* means a city, town, borough, county, parish, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of CWA.

*National Pollutant Discharge Elimination System* (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an "approved program."

*New discharger* means any building, structure, facility, or installation:

(a) From which there is or may be a new or additional "discharge of pollutants" at a "site" at which on October 18, 1972 it had never discharged pollutants; and

(b) Which has never received a finally effective NPDES "permit" for discharges at that site; and

(c) Which is not a "new source."

This definition includes an "indirect discharger" which commences discharging into "waters of the United States." It also includes any existing mobile point source, such as an offshore oil drilling rig, seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a location for which it does not have an existing permit. [See Note 2 of this section.]

*New source* means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

*NPDES* means "National Pollutant Discharge Elimination System."

*Owner or operator* means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

*Permit* means an authorization, license, or equivalent control document issued by EPA or an "approved State" to implement the requirements of this Part and Parts 123 and 124. "Permit" includes an NPDES "general permit" ( § 122.28). Permit does not include any permit which has not yet been the subject of final agency action, such as a "draft permit" or a "proposed permit."

*Person* means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

*Point source* means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

*Pollutant* means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended ( 42 U.S.C. 2011 *et seq.* )), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

[Note. -- Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear materials. Examples of materials not covered include radium and accelerator-produced isotopes. See *Train v. Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976).]

*POTW* means "publicly owned treatment works."

*Primary industry category* means any industry category listed in the NRDC settlement agreement ( *Natural Resources Defense Council et al. v. Train*, 8 E.R.C. 2120 (D.D.C. 1976), *modified* 12 E.R.C. 1833 (D.D.C. 1979)); also listed in Appendix A of Part 122.

*Privately owned treatment works* means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a "POTW."

*Process wastewater* means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

*Proposed permit* means a State NPDES "permit" prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for review before final issuance by the State. A "proposed permit" is not a "draft permit."

*Publicly owned treatment works* ("POTW") means any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a "State" or "municipality." This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment.

*Recommencing discharger* means a source which recommences discharge after terminating operations.

*Regional Administrator* means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

*Schedule of compliance* means a schedule of remedial measures included in a "permit", including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the CWA and regulations.

*Secondary industry category* means any industry category which is not a "primary industry category."

*Secretary* means the Secretary of the Army, acting through the Chief of Engineers.

*Sewage from vessels* means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under section 312 of CWA, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purposes of this definition, "graywater" means galley, bath, and shower water.

*Sewage sludge* means the solids, residues, and precipitate separated from or created in sewage by the unit processes of a "publicly owned treatment works." "Sewage" as used in this definition means any wastes, including wastes from humans, households, commercial establishments, industries, and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

*Site* means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

*State* means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

*State Director* means the chief administrative officer of any State or interstate agency operating an "approved program," or the delegated representative of the State Director. If responsibility is divided among two or more State or interstate agencies, "State Director" means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

*State/EPA Agreement* means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs including those under the CWA programs.

*Total dissolved solids* means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

*Toxic pollutant* means any pollutant listed as toxic under section 307(a)(1) of CWA.

*Variance* means any mechanism or provision under sections 301 or 316 of CWA or under 40 CFR Part 125, or in the applicable "effluent limitations guidelines" which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on sections 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

*Waters of the United States* or *waters of the U.S.* means:

(a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands;"

(c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) Which are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a)-(d) of this definition;

(f) The territorial sea; and

(g) "Wetlands" adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)-(f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA (other than cooling ponds as defined in 40 CFR § 423.11(m) which also meet the criteria of this definition) are not waters of the United States. This exclusion applies only to manmade bodies of water which neither were originally created in waters of the United States (such as disposal area in wetlands) nor resulted from the impoundment of waters of the United States. [See Note 1 of this section.]

*Wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

[Note 1. -- At 45 FR 48620, July 21, 1980, the Environmental Protection Agency suspended until further notice in § 122.2, in the definition of "Waters of the United States." This revision continues that suspension.]

[Note 2. -- At 45 FR 68391, Oct. 15, 1980, effective Oct. 15, 1980, the Environmental Protection Agency suspended until further notice the NPDES "new discharger" definition as it applies to offshore mobile drilling rigs

operating in offshore areas adjacent to the Gulf Coast, Atlantic Coast, California and Alaska, except for the Flower Garden area in the Gulf of Mexico and other areas identified as environmentally sensitive by the Bureau of Land Management. This revision continues that suspension.]

§ 122.3 Exclusions.

The following discharges do not require NPDES permits:

(a) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development.

(b) Discharges of dredged or fill material into waters of the United States which are regulated under section 404 of CWA.

(c) The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to waters of the United States are eliminated. (See also § 122.47(b)). This exclusion does not apply to the introduction of pollutants to privately owned treatment works or to other discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other party not leading to treatment works.

(d) Any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR Part 1510 (The National Oil and Hazardous Substances Pollution Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances).

(e) Any introduction of pollutants from non point-source agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in § 122.23, discharges from concentrated aquatic animal production facilities as defined in § 122.24, discharges to aquaculture projects as defined in § 122.25, and discharges from silvicultural point sources as defined in § 122.27.

(f) Return flows from irrigated agriculture.

(g) Discharges into a privately owned treatment works, except as the Director may otherwise require under § 122.44(m).

§ 122.4 Prohibitions (applicable to State NPDES programs, see § 123.25).

No permit may be issued:

(a) When the conditions of the permit do not provide for compliance with the applicable requirements of CWA, or regulations promulgated under CWA;

(b) When the applicant is required to obtain a State or other appropriate certification under section 401 of CWA and § 124.53 and that certification has not been obtained or waived;

(c) By the State Director where the Regional Administrator has objected to issuance of the permit under § 123.44;

(d) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States;

(e) When, in the judgment of the Secretary, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(f) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(g) For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of CWA;

(h) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(1) Before the promulgation of guidelines under section 403(c) of CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the Director determines permit issuance to be in the public interest; or

(2) After promulgation of guidelines under section (403(c) of CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.

(i) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by section 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

(1) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards.

#### § 122.5 Effect of a permit.

(a) *Applicable to State programs, see § 123.25.* Except for any toxic effluent standards and prohibitions imposed under section 307 of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with section 301, 302, 306, 307, 318, 403, and 405 of CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 122.62 and 122.64.

(b) *Applicable to State programs, See § 123.25.* The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

#### § 122.6. Continuation of expiring permits.

(a) *EPA permits.* When EPA is the permit-issuing authority, the conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit (see § 124.15) if:

(1) The permittee has submitted a timely application under § 122.21 which is a complete (under § 122.21(e)) application for a new permit; and

(2) The Regional Administrator, through no fault of the permittee does not issue a new permit with an effective date under § 124.15 on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(b) *Effect.* Permits continued under this section remain fully effectively and enforceable.

(c) *Enforcement.* When the permittee is not in compliance with the conditions of the expiring or expired permit the Regional Administrator may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit under § 124.6. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under Part 124 with appropriate conditions; or

(4) Take other actions authorized by these regulations.

(d) *State continuation.* (1) An EPA-issued permit does not continue in force beyond its expiration date under Federal law if at that time a State is the permitting authority. States authorized to administer the NPDES program may continue either EPA or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit.

#### § 122.7 Confidentiality of information.

(a) In accordance with 40 CFR Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR Part 2 (Public Information).

(b) *Applicable to State programs, see § 123.25.* Claims of confidentiality for the following information will be denied:

(1) The name and address of any permit applicant or permittee;

(2) Permit applications, permits, and effluent data.

(c) *Applicable to State programs, see § 123.25.* Information required by NPDES application forms provided by the Director under § 122.21 may not be claimed confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

#### Subpart B -- Permit Application and Special NPDES Program Requirements

##### § 122.21 Application for a permit (applicable to State programs, see § 123.25).

(a) *Duty to apply.* Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by general permits under § 122.28, excluded under § 122.3, or a user of a privately owned treatment works unless the Director requires otherwise under § 122.44(m), shall submit a complete application (which shall include a BMP program if necessary under 40 CFR 125.102) to the Director in accordance with

this section and Part 124.

(b) *Who applies?* When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

(c) *Time to apply.* Any person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180 day requirement to avoid delay. See also paragraph (k) of this section.

(d) *Duty to reapply.* (1) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. (The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.)

(2) All other permittees with currently effective permits shall submit a new application in accordance with the table below:

Permit expires	Application requirement	Deadline for submission
On or before Nov. 30, 1980	(1) If applicant has submitted new application before Apr. 30, 1980, new application n1 is not required. (2) If applicant has not submitted new application before Apr. 30, 1980, applicant must submit new application. n1	Not applicable.  Date on which permit expires. n2
Dec. 1, 1980-May 31, 1981	New application n1	90 days before permit expires. n2 n3
On or after June 1, 1981	New application n1	180 days before n3 permit expires.

n1 The new application requirements are set forth in paragraphs (f), (g), and (h) this section. Applicants for EPA-issued permits must use Forms 1 and either 2b or 2c of EPA's consolidated permit application forms to apply under those sections.

n2 Applicants may request additional time for the submission of information required by paragraphs (d)(7), (9) and (10) of this section. The request must be in writing and must state the reasons this information could not be submitted on time. Based upon this request, the Director may extend the time to submit all or some of the information up to six months beyond the deadline for submission or June 30, 1981, whichever is earlier.

n3 The Director may grant permission to submit an application later than this date, but no later than the expiration date of the permit.

[See Note 5.]

(e) *Completeness.* The Director shall not issue a permit before receiving a complete application for a permit except



for NPDES general permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. For EPA administered NPDES programs, an application which is reviewed under § 124.3 is complete when the Director receives either a complete application or the information listed in a notice of deficiency.

(f) *Information requirements.* All applicants for NPDES permits shall provide the following information to the Director, using the application form provided by the Director (additional information required of applicants is set forth in paragraphs (g)-(k)) of this section.

- (1) The activities conducted by the applicant which require it to obtain an NPDES permit.
- (2) Name, mailing address, and location of the facility for which the application is submitted.
- (3) Up to four SIC codes which best reflect the principal products or services provided by the facility.
- (4) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.
- (5) Whether the facility is located on Indian lands.
- (6) A listing of all permits or construction approvals received or applied for under any of the following programs:
  - (i) Hazardous Waste Management program under RCRA.
  - (ii) UIC program under SDWA.
  - (iii) NPDES program under CWA.
  - (iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.
  - (v) Nonattainment program under the Clean Air Act.
  - (vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.
  - (vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.
  - (viii) Dredge or fill permits under section 404 of CWA.
  - (ix) Other relevant environmental permits, including State permits.
- (7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.
- (8) A brief description of the nature of the business.

(g) *Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers.* Existing manufacturing, commercial, mining, and silvicultural dischargers applying for NPDES permits shall provide the following information to the Director, using application forms provided by the Director:

- (1) *Outfall location.* The latitude and longitude to the nearest 15 seconds and the name of the receiving water.
- (2) *Line Drawing.* A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under paragraph (g)(3) of this section. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.
- (3) *Average flows and treatment.* A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and stormwater runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms (for example, "dye-making reactor", "distillation tower".) For a privately owned treatment works, this information shall include the identity of each user of the treatment works.
- (4) *Intermittent flows.* If any of the discharges described in paragraph (g)(3) of this section are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for stormwater runoff, spillage or leaks).
- (5) *Maximum production.* If an effluent guideline promulgated under section 304 of CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility as required by § 122.45(b)(2).
- (6) *Improvements.* If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.
- (7) *Effluent characteristics.* Information on the discharge of pollutants specified in this paragraph. When "quantitative data" for a pollutant is required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also applies to the substantially identical outfalls. The requirements in paragraphs (g)(7) (iii) and (iv) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used.

An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

- (i)(A) Every applicant must report quantitative data for every outfall for the following pollutants:

Biochemical Oxygen Demand (BOD<sub>5</sub>)

Chemical Oxygen Demand

Total Organic Carbon

Total Suspended Solids

Ammonia (as N)

Temperature (both winter and summer)

pH

(B) At the applicant's request, the Director may waive the reporting requirements for one or more of the pollutants listed in paragraph (g)(7)(i)(A) of this section.

(ii) Each applicant with processes in one or more primary industry category (see Appendix A to Part 122) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(A) The organic toxic pollutants in the fractions designated in Table I of Appendix D of this Part for the applicant's industrial category or categories unless the applicant qualifies as a small business under paragraph (d)(8) of this section. Table II of Appendix D of this Part lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes. [See Notes 2, 3, and 4 of this section.]

(B) The pollutants listed in Table III of Appendix D of this Part (the toxic metals, cyanide, and total phenols).

(iii) Each applicant must report for each outfall quantitative data for the following pollutants, if the applicant knows or has reason to believe that the pollutant is discharged from the outfall:

(A) All pollutants listed in Table II or Table III of Appendix D of this Part (the toxic pollutants) for which quantitative data is not otherwise required under paragraph (g)(7)(ii) of this section except that an applicant qualifying as a small business under paragraph (g)(8) of this section is not required to analyze for the pollutants listed in Table II of Appendix D of this Part (the organic toxic pollutants).

(B) All pollutants in Table IV of Appendix D of this Part (certain conventional and nonconventional pollutants).

(iv) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of Appendix D of this Part (certain hazardous substances and asbestos) is discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

(v) Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(A) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Rannel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(B) Knows or has reason to believe that TCDD is or may be present in an effluent.

(8) *Small business exemption.* An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in paragraphs (g)(7)(ii)(A) or (g)(7)(iii)(A) of this section to submit quantitative data for the pollutants listed in Table II of Appendix D of this Part (the organic toxic pollutants):

(i) For coal mines, a probable total annual production of less than 100,000 tons per year.

(ii) For all other applicants, gross total annual sales averaging less than \$100,000 per year (in second quarter 1980 dollars).

(9) *Used or manufactured toxics.* A listing of any toxic pollutant which the applicant does or expects that it will during the next 5 years use or manufacture as an intermediate or final product or byproduct.

(10) *Potential discharges.* A description of the expected levels of and the reasons for any discharges of pollutants which the applicant knows or has reason to believe will exceed two times the values reported in paragraph (g)(7) of this section over the next 5 years.

(11) *Biological toxicity tests.* An identification of any biological toxicity tests which the applicant knows or has reason to believe have been made within the last 3 years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(12) *Contract analyses.* If a contract laboratory or consulting firm performed any of the analyses required by paragraph (g)(7) of this section, the identity of each laboratory or firm and the analyses performed.

(13) *Additional information.* In addition to the information reported on the application form, applicants shall provide to the Director, at his or her request, such other information as the Director may reasonably require to assess the discharges of the facility and to determine whether to issue an NPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

(h) *Application requirements for new and existing concentrated animal feeding operations and aquatic animal production facilities.* New and existing concentrated animal feeding operations (defined in § 122.23) and concentrated aquatic animal production facilities (defined in § 122.24) shall provide the following information to the Director, using the application form provided by the Director:

(1) For concentrated animal feeding operations:

(i) The type and number of animals in open confinement and housed under roof.

(ii) The number of acres used for confinement feeding.

(iii) The design basis for the runoff diversion and control system, if one exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

(2) For concentrated aquatic animal production facilities:

(i) The maximum daily and average monthly flow from each outfall.

(ii) The number of ponds, raceways, and similar structures.

(iii) The name of the receiving water and the source of intake water.

(iv) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(v) The calendar month of maximum feeding and the total mass of food fed during that month.

(i) *Application requirements for new and existing POTWs.* [Reserved.]

(j) *Application requirements for new sources and new dischargers.* [Reserved.]

(k) *Special provisions for applications from new sources.* (1) The owner or operator of any facility which may be a new source (as defined in § 122.2) and which is located in a State without an approved NPDES program must comply with the provisions of this paragraph.

(2)(i) Before beginning any on-site construction as defined in § 122.29, the owner or operator of any facility which may be a new source must submit information to the Regional Administrator so that he or she can determine if the facility is a new source. The Regional Administrator may request any additional information needed to determine whether the facility is a new source.

(ii) The Regional Administrator shall make an initial determination whether the facility is a new source within 30 days of receiving all necessary information under paragraph (k)(2)(i) of this section.

(3) The Regional Administrator shall issue a public notice in accordance with § 124.10 of the new source determination under paragraph (k)(2) of this section. If the Regional Administrator has determined that the facility is a new source, the notice shall state that the applicant must comply with the environmental review requirements of 40 CFR 6.600 *et seq.*

(4) Any interested person may challenge the Regional Administrator's initial new source determination by requesting an evidentiary hearing under Subpart E of Part 124 within 30 days of issuance of the public notice of the initial determination. The Regional Administrator may defer the evidentiary hearing on the determination until after a final permit decision is made, and consolidate the hearing on the determination with any hearing on the permit.

(l) *Variance requests by non-POTWs.* A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this paragraph:

(1) *Fundamentally different factors.* A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based, shall be made by the close of the public comment period under § 124.10. The request shall explain how the requirements of § 124.13 and 40 CFR Part 125, Subpart D have been met.

(2) *Non-conventional pollutants.* A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of CWA because of certain environmental considerations, when those requirements were based on effluent limitation guidelines, must be made by:

(i) Submitting an initial request to the Regional Administrator, as well as to the State Director if applicable, stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and whether the discharger is requesting a section 301(c) or section 301(g) modification or both. This request must have been filed not later than:

(A) September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

(B) 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977; and

(ii) Submitting a completed request no later than the close of the public comment period under § 124.10 demonstrating that the requirements of § 124.13 and the applicable requirements of Part 125 have been met.

(iii) Requests for variance from effluent limitations not based on effluent limitation guidelines need only comply with paragraph (1)(2)(ii) of this section and need not be preceded by an initial request under paragraph (1)(2)(i) of this section.

(3) *Delay in construction of POTW.* An extension under CWA section 301(i)(2) of the statutory deadlines in sections 301(b)(1)(A) or (b)(1)(C) of CWA based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978, or 180 days after the relevant POTW requested an extension under paragraph (m)(2) of this section, whichever is later, but in no event may this date have been later than December 25, 1978. The request shall explain how the requirements of 40 CFR Part 125, Subpart J have been met.

(4) *Innovative technology.* An extension under CWA section 301(k) from the statutory deadline of section 301(b)(2)(A) for best available technology based on the use of innovative technology may be requested no later than the close of the public comment period under § 124.10 for the discharger's initial permit requiring compliance with section 301(b)(2)(A). The request shall demonstrate that the requirements of § 124.13 and Part 125, Subpart C have been met.

(5) *Water quality related effluent limitations.* A modification under section 302(b)(2) of requirements under section 302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period under § 124.10 on the permit from which the modification is sought.

(6) *Thermal discharges.* A variance under CWA section 316(a) for the thermal component of any discharge must be filed with a timely application for a permit under this section, except that if thermal effluent limitations are established under CWA Section 402(a)(1) or are based on water quality standards the request for a variance may be filed by the close of the public comment period under § 124.10. A copy of the request as required under 40 CFR Part 125, Subpart H, shall be sent simultaneously to the appropriate State or interstate certifying agency as required under 40 CFR Part 125. (See § 124.65 for special procedures for section 316(a) thermal variances.)

(m) *Variance requests by POTWs.* A discharger which is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory provisions as specified in this paragraph:

(1) *Discharges into marine waters.* A request for a modification under CWA section 301(h) of requirements of CWA section 301(b)(1)(B) for discharges into marine waters must be filed in accordance with the requirements of 40 CFR Part 125, Subpart G.

(2) *Delay in construction.* An extension under CWA section 301(i)(1) of the statutory deadlines in CWA section 301(b)(1)(B) or (b)(1)(C) based on delay in the construction of the POTW must have been requested on or before June 26, 1978.

(3) *Water quality based effluent limitation.* A modification under CWA section 302(b)(2) of the requirements under section 302(a) for achieving water quality based effluent limitations shall be requested no later than the close of the public comment period under § 124.10 on the permit from which the modification is sought.

(n) *Expedited variance procedures and time extensions.* (1) Notwithstanding the time requirements in paragraphs

(l) and (m) of this section, the Director may notify a permit applicant before a draft permit is issued under § 124.6 that the draft permit will likely contain limitations which are eligible for variances. In the notice the Director may require the applicant as a condition of consideration of any potential variance request to submit a request explaining how the requirements of 40 CFR Part 125 applicable to the variance have been met and may require its submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance.

(2) A discharger who cannot file a complete request required under paragraph (l)(2)(ii) or (l)(2)(iii) of this section may request an extension. The extension may be granted or denied at the discretion of the Director. Extensions shall be no more than 6 months in duration.

(o) *Recordkeeping.* Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least 3 years from the date the application is signed.

[Note 1. -- At 46 FR 2046, Jan. 8, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) and the corresponding portions of Item V-C of the NPDES application Form 2c as they apply to coal mines. This revision continues that suspension.]

[Note 2. -- At 46 FR 22585, Apr. 20, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) and the corresponding portions of Item V-C of the NPDES application Form 2c as they apply to:

1. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (Subpart C -- Low water use processing of 40 CFR Part 410), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

2. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (Subpart B of 40 CFR Part 440), and testing and reporting for all four fractions in all other subcategories of this industrial category.

3. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

This revision continues that suspension.]

[Note 3. -- At 46 FR 35090, July 1, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) and the corresponding portions of Item V-C of the NPDES application Form 2c as they apply to:

1. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (Subpart D) and Rosin-Based Derivatives Subcategory (Subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454), and testing and reporting for the pesticide and base-neutral fractions in all other subcategories of this industrial category.

2. Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

3. Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

4. Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories (Subparts J and U) of the Pulp and Paper industry (40 CFR Part 430); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (Subpart Q), Dissolving Kraft (Subpart F), and Paperboard from Waste Paper (Subpart

E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (Subpart H), Semi-Chemical (Subparts B and C), and Nonintegrated-Fine Papers (Subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (Subpart I), Dissolving Sulfite Pulp (Subpart K), Groundwood-Fine Papers (Subpart O), Market Bleached Kraft (Subpart G), Tissue from Wastepaper (Subpart T), and Nonintegrated-Tissue Papers (Subpart S).

5. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

This revision continues that suspension.]

[Note 4. -- At 46 FR 36703, July 15, 1981, the Environmental Protection Agency suspended until further notice portions of § 122.21(d)(2), as set forth below:

1. Footnote (2) to the table in § 122.21(d)(2).

2. In footnote (3) to the table in 40 CFR § 122.21(d)(2), the portion which restricts the Director's authority to extend the application deadline no later than the permit expiration date as that restriction applies to the submission of data required by § 122.21(d) (7), (9), and (10). Thus, during the suspension, footnote (3) effectively reads as follows:

3. The Director may grant permission to submit an application later than this date but (except for information required by paragraph (d) (7), (9), and (10) of this section) no later than the expiration date of the permit.

This revision continues that suspension.]

§ 122.22 Signatories to permit applications and reports (applicable to State programs, see § 123.25).

(a) *Applications.* All permit applications shall be signed as follows:

(1) *For a corporation:* by a principal executive officer of at least the level of vice-president;

(2) *For a partnership or sole proprietorship:* by a general partner or the proprietor, respectively; or

(3) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official.

(b) *Reports.* All reports required by permits and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and

(3) The written authorization is submitted to the Director.

(c) *Changes to authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying



the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

§ 122.23 Concentrated animal feeding operations (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Concentrated animal feeding operations are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

(i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(ii) Crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(2) Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) "Concentrated animal feeding operation" means an "animal feeding operation" which meets the criteria in Appendix B of this Part, or which the Director designates under paragraph (c) of this section.

(c) *Case-by-case designation of concentrated animal feeding operations.* (1) The Director may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the United States. In making this designation the Director shall consider the following factors:

(i) The size of the animal feeding operation and the amount of wastes reaching waters of the United States;

(ii) The location of the animal feeding operation relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process waste waters into waters of the United States; and

(v) Other relevant factors.

(2) No animal feeding operation with less than the numbers of animals set forth in Appendix B of this Part shall be designated as a concentrated animal feeding operation unless:

(i) Pollutants are discharged into waters of the United States through a manmade ditch, flushing system, or other similar manmade device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(3) A permit application shall not be required from a concentrated animal feeding operation designated under this paragraph until the Director has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

§ 122.24 Concentrated aquatic animal production facilities (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Definition.* "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in Appendix C of this Part, or which the Director designates under paragraph (c) of this section.

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* (1) The Director may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

- (i) The location and quality of the receiving waters of the United States;
- (ii) The holding, feeding, and production capacities of the facility;
- (iii) The quantity and nature of the pollutants reaching waters of the United States; and
- (iv) Other relevant factors.

(2) A permit application shall not be required from a concentrated aquatic animal production facility designated under this paragraph until the Director has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

§ 122.25 Aquaculture projects (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Discharges into aquaculture projects, as defined in this section, are subject to the NPDES permit program through section 318 of CWA, and in accordance with 40 CFR Part 125, Subpart B.

(b) *Definitions.* (1) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(2) "Designated project area" means the portions of the waters of the United States within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

§ 122.26 Separate storm sewers (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Separate storm sewers, as defined in this section are point sources subject to the NPDES permit program. Separate storm sewers may be permitted either individually or under a general permit (See § 122.28). An NPDES permit for discharges into waters of the United States from a separate storm sewer covers all conveyances

which are a part of that separate storm sewer system, even though there may be several owners or operators of these conveyances. However, discharges into separate storm sewers from point sources which are not part of the separate storm sewer systems may also require a permit.

(b) *Definition.* (1) "Separate storm sewer" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and which is either:

(i) Located in an urbanized area as designated by the Bureau of the Census according to the criteria in 39 FR 15202 (May 1, 1974); or

(ii) Not located in an urbanized area but designated under paragraph (c) of this section.

(2) Except as provided in paragraph (b)(3) of this section, a conveyance or system of conveyances operated primarily for the purpose of collecting and conveying storm water runoff which is not located in an urbanized area and has not been designated by the Director under paragraph (c) of this section is not considered a point source and is not subject to the provisions of this section.

(3) Conveyances which discharge process wastewater or storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil, from lands or facilities used for industrial or commercial activities, into waters of the United States or into separate storm sewers are point sources that must obtain NPDES permits but are not separate storm sewers.

(4) Whether a system of conveyances is or is not a separate storm sewer for purposes of this section shall have no bearing on whether the system is eligible for funding under Title II of CWA; see 40 CFR 35.925-21.

(c) *Case-by-case designation of separate storm sewers.* The Director may designate a storm sewer not located in an urbanized area as a separate storm sewer. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category; or when:

(1) A Water Quality Management plan under section 208 of CWA which contains requirements applicable to such point sources is approved; or

(2) The Director determines that a storm sewer is a significant contributor of pollution to the waters of the United States. In making this determination the Director shall consider the following factors:

(i) The location of the discharge with respect to waters of the United States;

(ii) The size of the discharge;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other relevant factors.

§ 122.27 Silvicultural activities (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Silvicultural point sources, as defined in this section, as point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Silvicultural point source" means any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road

construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a CWA section 404 permit (See 33 CFR 209.120 and Part 233).

(2) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap (See 40 CFR Part 436, Subpart B, including the effluent limitations guidelines).

(3) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR Part 429, Subpart I, including the effluent limitations guidelines).

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

(a) *Coverage*. The Director may issue a general permit in accordance with the following:

(1) *Area*. The general permit shall be written to cover a category of discharges described in the permit under paragraph (a)(2) of this section, except those covered by individual permits, within a geographic area. The area shall correspond to existing geographic or political boundaries, such as:

- (i) Designated planning areas under sections 208 and 303 of CWA;
- (ii) Sewer districts or sewer authorities;
- (iii) City, county, or State political boundaries;
- (iv) State highway systems;
- (v) Standard metropolitan statistical areas as defined by the Office of Management and Budget;
- (vi) Urbanized areas as designated by the Bureau of the Census according to criteria in 30 FR 15202 (May 1, 1974);

or

- (vii) Any other appropriate division or combination of boundaries.

(2) *Sources*. The general permit shall be written to regulate, within the area described in paragraph (a)(1) of this section, either:

- (i) Separate storm sewers; or
- (ii) A category of minor point sources other than separate storm sewers if the sources all:
  - (A) Involve the same or substantially similar types of operations;
  - (B) Discharge the same types of wastes;
  - (C) Require the same effluent limitations or operating conditions;
  - (D) Require the same or similar monitoring; and

(E) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

- (b) *Administration*. (1) *In general*. General permits may be issued, modified, revoked and reissued, or terminated

in accordance with applicable requirements of Part 124 or corresponding State regulations. Special procedures for issuance are found at § 123.44 for States and § 124.58 for EPA.

(2) *Requiring an individual permit.* (i) The Director may require any person authorized by a general permit to apply for and obtain an individual NPDES permit. Any interested person may petition the Director to take action under this paragraph. Cases where an individual NPDES permit may be required include the following:

- (A) The discharge(s) is a significant contributor of pollution as determined by the factors set forth at § 122.26(c)(2);
- (B) The discharger is not in compliance with the conditions of the general NPDES permit;
- (C) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;
- (D) Effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit;
- (E) A Water Quality Management plan containing requirements applicable to such point sources is approved; or
- (F) The requirements of paragraph (a) of this section are not met.

(ii) *For EPA issued general permits only,* the Regional Administrator may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in paragraph (b)(2)(i) of this section, only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit the general permit as it applies to the individual permittee shall automatically terminate. The Director may grant additional time upon request of the applicant.

(iii) Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit an application under § 122.21, with reasons supporting the request, to the Director no later than 90 days after the publication by EPA of the general permit in the Federal Register or the publication by a State in accordance with applicable State law. The request shall be processed under Part 124 or applicable State procedures. The request shall be granted by issuing of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

(iv) When an individual NPDES permit is issued to an owner or operator otherwise subject to a general NPDES permit, the applicability of the general permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit.

(v) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

#### § 122.29 New sources and new dischargers.

##### (a) *Definitions.*

(1) "New source" and "new discharger" are defined in § 122.2. [See Note 2.]

(2) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

(3) "Existing source" means any source which is not a new source or a new discharger.

(4) "Site" is defined in § 122.2;

(5) "Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(b) *Criteria for new source determination.* (1) The following construction activities result in a new source:

(i) Construction of a source on a site at which no other source is located, or

(ii) Construction on a site at which another source is located of a building, structure, facility, or installation from which there is or may be a discharge of pollutants if:

(A) the process or production equipment that causes the discharge of pollutants from the existing source is totally replaced by this construction, or

(B) the construction results in a change in the nature or quantity of pollutants discharged.

(2) Construction on a site at which an existing source is located results in a modification subject to § 122.15 rather than a new source if the construction does not create a new building, structure, facility, or installation from which there is or may be a discharge of pollutants but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a new source as defined as § 122.3 has commenced if the owner or operator has: (i) Begun, or caused to begin as part a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, of facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered a binding contractual obligation for the purchase of facilities or equipment which are intended to be used on its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under the paragraph. [See Note 1 of this section.]

(c) *Requirement for an Environmental Impact Statement.* (1) The issuance of an NPDES permit to new source:

(i) By EPA may be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* and is subject to the environmental review provisions of NEPA as set out in 40 CFR Part 6, Subpart F. EPA will determine whether an Environmental Impact Statement (EIS) is required under § 122.21(k) (special provisions for applications from new sources) and 40 CFR Part 6, Subpart F;

(ii) By an NPDES approved State is not a Federal action and therefore does not require EPA to conduct an environmental review.

(2) An EIS prepared under this paragraph shall include a recommendation either to issue or deny the permit.

(i) If the recommendation is to deny the permit, the final EIS shall contain the reasons for the recommendation and list those measures, if any, which the applicant could take to cause the recommendation to be changed;

(ii) If the recommendation is to issue the permit, the final EIS shall recommend the actions, if any, which the permittee should take to prevent or minimize any adverse environmental impacts;

(3) The Regional Administrator shall issue, condition, or deny the new source NPDES permit following a complete evaluation of any significant beneficial and adverse environmental impacts and a review of the recommendations contained in the EIS or finding of no significant impact.

(4)(i) No on-site construction of a new source for which an EIS is required shall commence before final Agency action in issuing a final permit incorporating appropriate EIS-related requirements, or before execution by the applicant of a legally binding written agreement which requires compliance with all such requirements, unless such construction is determined by the Regional Administrator not to cause significant or irreversible adverse environmental impact. The provisions of any agreement entered into under this paragraph shall be incorporated as conditions of the NPDES permit when it is issued.

(ii) No on-site construction of a new source for which an EIS is not required shall commence until 30 days after issuance of a finding of no significant impact, unless the construction is determined by the Regional Administrator not to cause significant or irreversible adverse environmental impacts.

(5) The permit applicant must notify the Regional Administrator of any on-site construction which begins before the times specified in paragraph (c)(4) of this section. If on-site construction begins in violation of this paragraph, the Regional Administrator shall advise the owner or operator that it is proceeding with construction at its own risk, and that such construction activities constitute grounds for denial of a permit. The Regional Administrator may seek a court order to enjoin construction in violation of this paragraph.

(d) *Effect of compliance with new source performance standards.* (The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources or new dischargers or otherwise do not meet the requirements of this paragraph.)

(1) Except as provided in paragraph (d)(2) of this section, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may not be subject to any more stringent new source performance standards or to any more stringent technology-based standards under section 301(b)(2) of CWA for the soonest ending of the following periods:

(i) Ten years from the date that construction is completed;

(ii) Ten years from the date the source begins to discharge process or other nonconstruction related wastewater; or

(iii) The period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954.

(2) The protection from more stringent standards of performance afforded by paragraph (d)(1) of this section does not apply to:

(i) Additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under section 307(a) of CWA; or

(ii) Additional permit conditions in accordance with § 125.3 controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

(3) When an NPDES permit issued to a source with a "protection period" under paragraph (d)(1) of this section will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of section 301 and any other then applicable requirements of CWA immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than 3 years before the expiration of the protection period.

(4) The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit conditions.

(5) After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

[Note 1. -- § 122.29, paragraphs (b)(1) and (2) were suspended until further notice at 45 FR 59318, Sept. 9, 1980.]

[Note 2. -- At 45 FR 68391, Oct. 15, 1980, effective Oct. 15, 1980, the Environmental Protection Agency suspended until further notice the NPDES "new discharger" definition as it applies to offshore mobile drilling rigs operating in offshore areas adjacent to the Gulf Coast, Atlantic Coast, California and Alaska, except for the Flower Garden area in the Gulf of Mexico and other areas identified as environmentally sensitive by the Bureau of Land Management.]

#### Subpart C -- Permit Conditions

§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).

The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in § 122.42. All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(2) The Clean Water Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318 or 405 of the Clean Water Act is subject to a civil penalty not to exceed \$100,000 per day of such violation. Any person who willfully or negligently violates permit conditions implementing sections 301, 302, 306, 307 or 308 of the Act is subject to a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(b) *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) *Duty to halt or reduce activity.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit. Upon reduction, loss, or failure of the treatment facility, the permittee shall, to the extent necessary to maintain



compliance with its permit, control production or all discharges or both until the facility is restored or an alternative method of treatment is provided. This requirement applies, for example, when the primary source of power of the treatment facility fails or is reduced or lost.

(d) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

(e) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems *only* when necessary to achieve compliance with the conditions of the permit.

(f) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(g) *Property rights.* This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) *Duty to provide information.* The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.

(i) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

(j) *Monitoring and records.* (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

- (iii) The date(s) analyses were performed;
- (iv) The individual(s) who performed the analyses;
- (v) The analytical techniques or methods used; and
- (vi) The results of such analyses.

(4) Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

(5) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

(k) *Signatory requirement.* (1) All applications, reports, or information submitted to the Director shall be signed and certified. (See § 122.22)

(2) The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

(l) *Reporting requirements.* (1) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

(2) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See § 122.61; in some cases, modification or revocation and reissuance is mandatory.)

(4) *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(i) Monitoring results must be reported on a Discharge Monitoring Report (DMR).

(ii) If the permittee monitors any pollutant more frequently than required by the permit, using test procedures approved under 40 CFR 136 or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

(iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

(5) *Compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) *Twenty-four hour reporting.* (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period

of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See § 122.41(g).

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See § 122.44(g).)

(iii) The Director may waive the written report on a case-by-case basis for reports under paragraph (l)(6)(ii) of this section if the oral report has been received within 24 hours.

(7) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs (l) (4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (l)(6) of this section.

(m) *Bypass.* (1) *Definitions.* (i) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (m)(3) and (m)(4) of this section.

(3) *Notice.* (i) *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.

(ii) *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24-hour notice).

(4) *Prohibition of bypass.* (i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee could have installed adequate backup equipment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (m)(3) of this section.

(ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph (m)(4)(i) of this section.

(n) *Upset.* (1) *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (n)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(3) *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (i) An upset occurred and that the permittee can identify the specific cause(s) of the upset;
- (ii) The permitted facility was at the time being properly operated; and
- (iii) The permittee submitted notice of the upset as required in paragraph (1)(6)(ii)(B) of this section (24 hour notice).
- (iv) The permittee complied with any remedial measures required under paragraph (d) of this section.

(4) *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25).

The following conditions, in addition to those set forth in § 122.41, apply to all NPDES permits within the categories specified below:

(a) *Existing manufacturing, commercial, mining, and silvicultural dischargers.* In addition to the reporting requirements under § 122.41(1), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:

(1) That any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

- (i) One hundred micrograms per liter (100 m g/l);
- (ii) Two hundred micrograms per liter (200 m g/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 m g/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with § 122.21 (g)(7) or (g) (10); or
- (iv) The level established by the Director in accordance with § 122.44(f).

(2) That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under § 122.21(g)(9).

(b) *Publicly owned treatment works.* All POTWs must provide adequate notice to the Director of the following:

(1) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to sections 301 or 306 of CWA if it were directly discharging those pollutants; and

(2) Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

(3) For purposes of this paragraph, adequate notice shall include information on (i) the quality and quantity of effluent introduced into the POTW, and (i) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

§ 122.43 Establishing permit conditions (applicable to State programs, see § 123.25).

(a) In addition to conditions required in all permits ( §§ 122.41 and 122.42), the Director shall establish conditions, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of CWA and regulations. These shall include conditions under §§ 122.46 (duration of permits), 122.47(a) (schedules of compliance), 122.48 (monitoring), and for EPA permits only 122.47(b) (alternates schedule of compliance) and 122.49 (considerations under Federal law).

(b)(1) For a State issued permit, an applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. For a permit issued by EPA, an applicable requirement is a statutory or regulatory requirement (including any interim final regulation) which takes effect prior to the issuance of the permit (except as provided in § 124.86(c) for NPDES permits being processed under Subparts E or F of Part 124). Section 124.14 (reopening of comment period) provides a means for reopening EPA permit proceedings at the discretion of the Director where new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. For State and EPA administered programs, an applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in § 122.62.

(2) New or reissued permits, and to the extent allowed under § 122.62 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in §§ 122.44 and 122.45.

(c) *Incorporation.* All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

In addition to the conditions established under § 122.43(a), each NPDES permit shall include conditions meeting the following requirements when applicable.

(a) *Technology-based effluent limitations and standards* based on effluent limitations and standards promulgated under section 301 of CWA or new source performance standards promulgated under section 306 of CWA, on case-by-case effluent limitations determined under section 402(a)(1) of CWA, or on a combination of the two, in accordance with § 125.3. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of § 122.29(d) (protection period).

(b) *Other effluent limitations and standards* under sections 301, 302, 303, 307, 318, and 405 of CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition. See also § 122.41(a).

(c) *Reopener clause*: for any discharger within a primary industry category (see Appendix A), requirements under section 307(a)(2) of CWA as follows:

(1) On or before June 30, 1981: (i) If applicable standards or limitations have not yet been promulgated, the permit shall include a condition stating that, if an applicable standard or limitation is promulgated under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) and that effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or revoked and reissued to conform to that effluent standard or limitation.

(ii) If applicable standards or limitations have been promulgated or approved, the permit shall include those standards or limitations. (If EPA approves existing effluent limitations or proves existing effluent limitations or decides not to develop new effluent limitations, it will publish a notice in the Federal Register that the limitations are "approved" for the purpose of this regulation.)

(2) *After June 30, 1981*, any permit issued shall include effluent limitations and a compliance schedule to meet the requirements of sections 301(b)(2) (A), (C), (D), (E) and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved. These permits need not incorporate the clause required by paragraph (c)(1) of this section.

(3) The Director shall promptly modify or revoke and reissue any permit containing the clause required under paragraph (c)(1) of this section to incorporate an applicable effluent standard or limitation under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

(d) *Water quality standards and State requirements*: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318, and 405 of CWA necessary to:

(1) Achieve water quality standards established under section 303 of CWA;

(2) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of CWA;

(3) Conform to the conditions of a State certification under section 401 of CWA which meet the requirements of § 124.53 when EPA is the permit issuing authority; however, if a State certification is stayed by a court of competent jurisdiction or appropriate State board or agency, EPA shall include conditions in the permit which may be necessary to meet EPA's obligation under section 301(b)(1)(C) of CWA;

(4) Conform to applicable water quality requirements under section 401(a)(2) of CWA when the discharge affects a State other than the certifying State;

(5) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of CWA;

(6) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under section 208(b) of CWA;

(7) Incorporate section 403(c) criteria under Part 125, Subpart M, for ocean discharges;

(8) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 40 CFR Part 125, Subpart D;

(9) Incorporate any other requirements, conditions, or limitations into a new source permit under the National

Environmental Policy Act 42 U.S.C. 4321 *et seq.* and section 511 of CWA, when EPA is the permit issuing authority (see § 122.29).

(e) *Toxic pollutants*: limitations established under paragraphs (a), (b), or (d) of this section, to control pollutants meeting the criteria listed in paragraph (e)(1) of this section. Limitations will be established in accordance with paragraph (e)(2) of this section. An explanation of the development of these limitations shall be included in the fact sheet under § 124.56(e)(2).

(1) Limitations must control all toxic pollutants which:

(i) The Director determines (based on information reported in a permit application under § 122.21(g)(7) or (10) or in a notification under § 122.42(a)(1) or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c); or

(ii) The discharger does or may use or manufacture as an intermediate or final product or byproduct.

(2) The requirement that the limitations control the pollutants meeting the criteria of paragraph (e)(1) of this section will be satisfied by:

(i) Limitations on those pollutants; or

(ii) Limitations on other pollutants which, in the judgment of the Director, will provide treatment of the pollutants under paragraph (e)(1) of this section to the levels required by § 125.3(c).

(f) *Notification level*: a "notification level" which exceeds the notification level of § 122.42(a)(1)(i), (ii), or (iii), upon a petition from the permittee or on the Director's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c)

(g) *Twenty-four hour reporting*: Pollutants for which the permittee must report violations of maximum daily discharge limitations under § 122.41(1)(6)(ii)(C)(24-hour reporting) shall be listed in the permit. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(h) *Durations* for permits, as set forth in § 122.46.

(i) *Monitoring requirements*: In addition to § 122.48, the following monitoring requirements:

(1) To assure compliance with permit limitations, requirements to monitor:

(i) The mass (or other measurement specified in the permit) for each pollutant limited in the permit,

(ii) The volume of effluent discharged from each outfall;

(iii) Other measurements as appropriate; including pollutants in internal waste streams under § 122.45(i), pollutants in intake water for net limitations under § 122.45(f); frequency, rate of discharge, etc., for noncontinuous discharges under § 122.45(e); and pollutants subject to notification requirements under § 122.42(a).

(iv) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under that Part, and according to a test procedure specified in the permit for pollutants with no approved methods.

(2) Requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(j) *Pretreatment program for POTWs:* requirements for POTWs to:

(1) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under section 307(b) of CWA and 40 CFR Part 403.

(2) Submit a local program when required by and in accordance with 40 CFR Part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR Part 403. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR Part 403.

(k) *Best management practices* to control or abate the discharge of pollutants when:

(1) Authorized under section 304(e) of CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

(2) Numeric effluent limitations are infeasible, or

(3) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of CWA.

(l) *Reissued permits.* (1) Except as provided in paragraph (1)(2) of this section when a permit is renewed or reissued, interim limitations, standards or conditions which are at least as stringent as the final limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62).

(2) When effluent limitations were imposed under section 402(a)(1) of CWA in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, this paragraph shall apply unless:

(i) The discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by the subsequently promulgated effluent limitation guidelines);

(ii) In the case of an approved State, State law prohibits permit conditions more stringent than an applicable effluent limitation guideline;

(iii) The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (section 301(b)(2)(E) of CWA);

(iv) The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.62; or

(v) There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but in no event shall permit limitations be less stringent than those required by subsequently promulgated standards and limitations.

(m) *Privately owned treatment works:* For a privately owned treatment works, any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure



compliance with applicable requirements under this Part. Alternatively, the Director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Director's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

(n) *Grants*: Any conditions imposed in grants made by the Administrator to POWs under sections 201 and 204 of CWA which are reasonably necessary for the achievement of effluent limitations under section 301 of CWA.

(o) *Sewage sludge*: Requirements under section 405 of CWA governing the disposal of sewage sludge from publicly owned treatment works, in accordance with any applicable regulations.

(p) *Coast Guard*: when a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

(q) *Navigation*: any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with § 124.58.

§ 122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25).

(a) *Outfalls and discharge points*. All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under § 122.44(j)(2) (BMPs where limitations are infeasible) and paragraph (i) of this section (limitations on internal waste streams).

(b) *Production-based limitations*. (1) In the case of POTWs, permit limitations, standards, or prohibitions shall be calculated based on design flow.

(2) Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility, such as the production during the high month of the previous year, or the monthly average for the highest of the previous 5 years. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

(c) *Metals*. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of the total metal (that is, the sum of the dissolved and suspended fractions of the metal) unless:

(1) An applicable effluent standard or limitation has been promulgated under CWA and specifies the limitation for the metal in the dissolved or valent form; or

(2) In establishing permit limitations on a case-by-case basis under § 125.3, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of CWA.

(d) *Continuous discharges*. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

(1) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and

(2) Average weekly and average monthly discharge limitations for POTWs.

(e) *Non-continuous discharges.* Discharges which are not continuous, as defined in § 122.2, shall be particularly described and limited, considering the following factors, as appropriate:

- (1) Frequency (for example, a batch discharge shall not occur more than once every 3 weeks);
- (2) Total mass (for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);
- (3) Maximum rate of discharge of pollutants during the discharge (for example, not to exceed 2 kilograms of zinc per minute); and
- (4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams ( 1/4 kilogram) of zinc in any discharge).

(f) *Mass limitations.* (1) All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

- (i) For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;
- (ii) When applicable standards and limitations are expressed in terms of other units of measurement; or
- (iii) If in establishing permit limitations on a case-by-case basis under § 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(2) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

(g) *Pollutants in intake water.* Except as provided in paragraph (h) of this section, effluent limitations imposed in permits may not be adjusted for pollutants in the intake water.

(h) *Net limitations.*

(1) Upon request of the discharger, effluent limitations or standards imposed in a permit shall be calculated on a "net" basis; that is, adjusted to reflect credit for pollutants in the discharger's intake water, if the discharger demonstrates that its intake water is drawn from the same body of water into which the discharge is made and if:

(i)(A) The applicable effluent limitations and standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis; or

(B) The discharger demonstrates that pollutants present in the intake water will not be entirely removed by the treatment systems operated by the discharger; and

(ii) The permit contains conditions requiring:

(A) The permittee to conduct additional monitoring (for example, for flow and concentration of pollutants) as necessary to determine continued eligibility for and compliance with any such adjustments; and

(B) The permittee to notify the Director if eligibility for an adjustment under this section has been altered or no longer exists. In that case, the permit may be modified accordingly under § 122.62.

(2) Permit effluent limitations or standards adjusted under this paragraph shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the discharger. Adjustments under this paragraph shall be given only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the discharger. In addition, effluent limitations or standards may not be adjusted to the extent that the pollutants in the intake water vary physically, chemically, or biologically from the pollutants limited in the permit. Nor may effluent limitations or standards be adjusted to the extent that the discharger significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.

(i) *Internal waste streams.* (1) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by § 122.44(i) shall also be applied to the internal waste streams.

(2) Limits on internal waste streams will be imposed only when the fact sheet under § 124.56 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(j) *Disposal of pollutants into wells, into POTWs or by land application.* Permit limitations and standards shall be calculated as provided in § 122.50.

§ 122.46 Duration of permits (applicable to State programs, see § 123.25).

(a) NPDES permits shall be effective for a fixed term not to exceed 5 years.

(b) Except as provided in § 122.5, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Director may issue any permit for a duration that is less than the full allowable term under this section.

(d) On or before June 30, 1981, any permit issued to a discharger in a primary industry category (see Appendix A of this Part):

(1) Shall meet one of the following conditions:

(i) Expire on June 30, 1981;

(ii) Incorporate effluent standards and limitations applicable to the discharger which have been promulgated or approved under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) of CWA; or

(iii) Incorporate the "reopener clause" required by § 122.44(c)(1), and effluent limitations to meet the requirements of sections 301(b)(2) (A), (C), (D), (E), and (F) of CWA.

(2) Shall not be written to expire after June 30, 1981 unless the discharger has submitted to the Director the information required by § 122.21(g)(7)(ii).

(e) After June 30, 1981, a permit may be issued for the full term if the permit includes effluent limitations and a compliance schedule to meet the requirements of sections 301(b)(2) (A), (C), (D), (E), and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated or approved.

(f) A determination that a particular discharger falls within a given industrial category for purposes of setting a

permit expiration date under paragraph (e) of this section is not conclusive as to the discharger's inclusion in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.

§ 122.47 Schedules of compliance.

(a) *General (applicable to State programs, see § 123.25).* The permit may, when appropriate, specify a schedule of compliance leading to compliance with CWA and regulations.

(1) *Time for compliance.* Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

(2) The first NPDES permit issued to a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger may not contain a schedule of compliance under this section. See also § 122.29(d)(4).

(3) *Interim dates.* Except as provided in paragraph (b)(1)(ii), if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

[Note. -- Examples of interim requirements include: (a) submit a complete Step 1 construction grant (for POTWs); (b) let a contract for construction of required facilities; (c) commence construction of required facilities; (d) complete construction of required facilities.]

(4) *Reporting.* The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(1)(ii) is applicable.

(b) *Alternative schedules of compliance.* An NPDES permit applicant or permittee may cease conducting regulated activities (by terminating of direct discharge for NPDES sources) rather than continuing to operate and meet permit requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before non-compliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements, no later than the statutory deadline;

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements no later than the statutory deadline.

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under paragraph (b)(3)(i) of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of directors of a corporation.

§ 122.48 Requirements for recording and reporting of monitoring results (applicable to State programs, see § 123.25).

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in § 122.44. Reporting shall be no less frequent than specified in the above regulations.

§ 122.49 Considerations under Federal law.

Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable Federal laws. These laws may include:

(a) The *Wild and Scenic Rivers Act*, 16 U.S.C. 1273 *et seq.* Section 7 of the Act prohibits the Regional Administrator from assisting by license or otherwise the construction of any water resources project that would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(b) The *National Historic Preservation Act of 1966*, 16 U.S.C. 470 *et seq.* Section 106 of the Act and implementing regulations (36 CFR Part 800) require the Regional Administrator, before issuing a license, to adopt measures when feasible to mitigate potential adverse effects of the licensed activity and properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(c) The *Endangered Species Act*, 16 U.S.C. 1531 *et seq.* Section 7 of the Act and implementing regulations (50 CFR Part 402) require the Regional Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

(d) The *Coastal Zone Management Act*, 16 U.S.C. 1451 *et seq.* Section 307(c) of the Act and implementing

regulations (15 CFR Part 930) prohibit EPA from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the proposed activity complies with the State Coastal Zone Management program, and the State or its designated agency concurs with the certification (or the Secretary of Commerce overrides the State's nonconcurrence).

(e) The *Fish and Wildlife Coordination Act*, 16 U.S.C. 661 *et seq.*, requires that the Regional Administrator, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion, or other control or modification of any body of water, consult with the appropriate State agency exercising jurisdiction over wildlife resources to conserve those resources.

(f) *Executive orders*. [Reserved.]

(g) The *National Environmental Policy Act*, 33 U.S.C. 4321 *et seq.*, may require preparation of an Environmental Impact Statement and the inclusion of EIS-related permit conditions, as provided in § 122.29(c).

§ 122.50 Disposal of pollutants into wells, into publicly owned treatment works or by land application (applicable to State NPDES programs, see § 123.25).

(a) When part of a discharger's process wastewater is not being discharged into waters of the United States or contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the United States, applicable effluent standards and limitations for the discharge in an NPDES permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(1) If none of the waste from a particular process is discharged into waters of the United States, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards.

(2) In all cases other than those described in paragraph (a)(1) of this section, effluent limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under Part 125, Subpart D to make them more stringent if discharges to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

This method may be algebraically expressed as:

$$P = E \times N/T$$

where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.

(b) Paragraph (a) of this section does not apply to the extent that promulgated effluent limitations guidelines:

(1) Control concentrations of pollutants discharged but not mass; or

(2) Specify a different specific technique for adjusting effluent limitations to account for well injection, land application, or disposal into POTWs.

(c) Paragraph (a) of this section does not alter a discharger's obligation to meet any more stringent requirements established under §§ 122.41, 122.42, 122.43, and 122.44.

## Subpart D -- Transfer, Modification, Revocation and Reissuance, and Termination of Permits

### § 122.61 Transfer of permits (applicable to State programs, see § 123.25).

(a) *Transfers by modification.* Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 122.62(b)(2)), or a minor modification made (under § 122.63(d)), to identify the new permittee and incorporate such other requirements as may be necessary under CWA.

(b) *Automatic transfers.* As an alternative to transfers under paragraph (a) of this section, any NPDES permit may be automatically transferred to a new permittee if:

(1) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date in paragraph (b)(2) of this section;

(2) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

(3) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this subparagraph may also be a minor modification under § 122.63. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

### § 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 122.41), receives a request for modification or revocation and reissuance under § 124.5, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See § 124.5(c)(2). If cause does not exist under this section or § 122.63, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in § 122.63 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in Part 124 (or procedures of an approved State program) followed.

(a) *Causes for modification.* The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

[Note. -- Certain reconstruction activities may cause the new source provisions of § 122.29 to be applicable.]

(2) *Information.* The Director has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For NPDES general permits ( § 122.28) this cause includes any information indicating that cumulative effects on the environment are unacceptable.

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(i) For promulgation of amended standards or regulations, when:

(A) The permit condition requested to be modified was based on a promulgated effluent limitation guideline or EPA approved or promulgated water quality standard; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a State action with regard to a water quality standard on which the permit condition was based; and

(C) A permittee requests modification in accordance with § 124.5 within ninety (90) days after Federal Register notice of the action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with § 124.5 within ninety (90) days of judicial remand.

(iii) For changes based upon modified State certifications of NPDES permits, see § 124.55(b).

(4) *Compliance schedules.* The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an NPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline. See also § 122.63(c) (minor modifications) and paragraph (a)(14) of this section (NPDES innovative technology).

(5) *Variances.* When the permittee has filed a request for a variance under CWA section 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a) or for "fundamentally different factors" within the time specified in § 122.21, and the Director processes the request under the applicable provisions of §§ 124.61 124.62, and 124.64.

(6) *307(a) toxics.* When required to incorporate an applicable 307(a) toxic effluent standard or prohibition (see § 122.44(b)).

(7) *Reopener.* When required by the "reopener" conditions in a permit, which are established in the permit under § 122.44(b) (for CWA toxic effluent limitations) or 40 CFR 403.10(e) (pretreatment program).

(8)(i) *Net limits.* Upon request of a permittee who qualifies for effluent limitations on a net basis under § 122.45(h).

(ii) When a discharger is no longer eligible for net limitations, as provided in § 122.45(h)(1)(ii)(B).

(9) *Pretreatment.* As necessary under 40 CFR 403.8(e) (compliance schedule for development of pretreatment program).

(10) *Failure to notify.* Upon failure of an approved State to notify, as required by section 402(b)(3), another State whose waters may be affected by a discharge from the approved State.

(11) *Non-Limited pollutants.* When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c).



(12) *Use or manufacture of toxics.* When the permittee begins or expects to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application under § 122.21(g)(9).

(13) *Notification levels.* To establish a "notification level" as provided in § 122.44(f).

(14) *Compliance schedules.* To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under section 202(a)(3) of CWA for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under section 202(a)(2). In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

(b) *Causes for modification or revocation and reissuance.* The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under § 122.64, and the Director determines that modification or revocation and reissuance is appropriate.

(2) The Director has received notification (as required in the permit, see § 122.41(1)(3)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer ( § 122.61(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

#### § 122.63 Minor modifications of permits.

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part 124. Any permit modification not processed as a minor modification under this section must be made for cause and with Part 124 draft permit and public notice as required in § 122.62. Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

(d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.

(e)(1) Change the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under § 122.29.

(2) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

#### § 122.64 Termination of permits (applicable to State programs, see § 123.25).

(a) The following are causes for terminating a permit during its term, or for denying a permit renewal application:

- (1) Noncompliance by the permittee with any condition of the permit;
  - (2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or
  - (3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.
  - (4) A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure or termination of discharge by connection to a POTW).
- (b) The Director shall follow the applicable procedures in Part 124 or State procedures in terminating any NPDES permit under this section.

#### Appendix A -- NPDES Primary Industry Categories

Any permit issued after June 30, 1981 to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of section 301(b)(2)(A), (C), (D), (E) and (F) of CWA, whether or not applicable effluent limitations guidelines have been promulgated. See §§ 122.44 and 122.46.

#### Industry Category

Adhesives and Sealants

Aluminum Forming

Auto and Other Laundries

Battery Manufacturing

Coal Mining

Coil Coating

Copper Forming

Electrical and Electronic Components

Electroplating

Explosives Manufacturing

Foundries

Gum and Wood Chemicals

Inorganic Chemicals Manufacturing

Iron and Steel Manufacturing

Leather Tanning and Finishing

Mechanical Products Manufacturing

Nonferrous Metals Manufacturing

Ore Mining

Organic Chemicals Manufacturing

Paint and Ink Formulation

Pesticides

Petroleum Refining

Pharmaceutical Preparations

Photographic Equipment and Supplies

Plastics Processing

Plastic and Synthetic Materials Manufacturing

Porcelain Enameling

Printing and Publishing

Pulp and Paper Mills

Rubber Processing

Soap and Detergent Manufacturing

Steam Electric Power Plants

Textile Mills

Timber Products Processing

Appendix B -- Criteria for Determining a Concentrated Animal Feeding Operation ( § 122.23)

An animal feeding operation is a concentrated animal feeding operation for purposes of § 122.23 if either of the following criteria are met.

(a) More than the numbers of animals specified in any of the following categories are confined:

- (1) 1,000 slaughter and feeder cattle,
- (2) 700 mature dairy cattle (whether milked or dry cows),
- (3) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),
- (4) 500 horses,
- (5) 10,000 sheep or lambs,
- (6) 55,000 turkeys,
- (7) 100,000 laying hens or broilers (if the facility has continuous overflow watering),
- (8) 30,000 laying hens or broilers (if the facility has a liquid manure system),
- (9) 5,000 ducks, or
- (10) 1,000 animal units; or

(b) More than the following number and types of animals are confined:

- (1) 300 slaughter or feeder cattle,
- (2) 200 mature dairy cattle (whether milked or dry cows),
- (3) 750 swine each weighing over 25 kilograms (approximately 55 pounds),
- (4) 150 horses,

- (5) 3,000 sheep or lambs,
- (6) 16,500 turkeys,
- (7) 30,000 laying hens or broilers (if the facility has continuous overflow watering),
- (8) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),
- (9) 1,500 ducks, or
- (10) 300 animal units;

and either one of the following conditions are met: pollutants are discharged into navigable waters through a manmade ditch, flushing system or other similar man-made device; or pollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24-hour storm event.

The term "animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds) multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

The term "manmade" means constructed by man and used for the purpose of transporting wastes.

#### Appendix C-Criteria for Determining a Concentrated Aquatic Animal Production Facility ( § 122.24).

A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of § 122.24 if it contains, grows, or holds aquatic animals in either of the following categories:

(a) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

(1) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(2) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(b) Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year, but does not include:

(1) Closed ponds which discharge only during periods of excess runoff; or

(2) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

"Cold water aquatic animals" include, but are not limited to, the *Salmonidae* family of fish; e.g., trout and salmon.

"Warm water aquatic animals" include, but are not limited to, the *Ameiuride*, *Centrarchidae* and *Cyprinidae* families of fish; e.g., respectively, catfish, sunfish and minnows.

## Appendix D -- NPDES Permit Application Testing Requirements ( § 122.21).

Table I. -- Testing Requirements for Organic Toxic Pollutants by Industrial Category for Existing Dischargers

Industrial category	GC/MS Fraction n1			
	Volatile	Acid	Base/ neutral	Pesticide
Adhesives and Sealants	*	*	*	
Aluminum Forming	*	*	*	
Auto and Other Laundries	*	*	*	*
Battery Manufacturing	*		*	
Coal Mining	*	*	*	*
Coil Coating	*	*	*	
Copper Forming	*	*	*	
Electric and Electronic Components	*	*	*	*
Electroplating	*	*	*	
Explosives Manufacturing		*	*	
Foundries	*	*	*	
Gum and Wood Chemicals	*	*	*	*
Inorganic Chemicals Manufacturing	*	*	*	
Iron and Steel Manufacturing	*	*	*	
Leather Tanning and Finishing	*	*	*	*
Mechanical Products Manufacturing	*	*	*	
Nonferrous Metals Manufacturing	*	*	*	*
Ore Mining	*	*	*	*
Organic Chemicals Manufacturing	*	*	*	*
Paint and Ink Formulation	*	*	*	*
Pesticides	*	*	*	*
Petroleum Refining	*	*	*	*
Pharmaceutical Preparations	*	*	*	
Photographic Equipment and Supplies	*	*	*	*
Plastic and Synthetic Materials Manufacturing	*	*	*	*
Plastic Processing	*			
Porcelain Enameling	*		*	*
Printing and Publishing	*	*	*	*
Pulp and Paper Mills	*	*	*	*
Rubber Processing	*	*	*	
Soap and Detergent Manufacturing	*	*	*	

Steam Electric Power Plants	*	*	*	
Textile Mills	*	*	*	*
Timber Products Processing	*	*	*	*

n1 The toxic pollutants in each fraction are listed in Table II.

\*Testing required.

Table II. -- Organic Toxic Pollutants in Each of Four Fractions in Analysis by Gas Chromatography/Mass Spectroscopy (GS/MS)

Volatiles

1V acrolein

2V acrylonitrile

3V benzene

5V bromoform

6V carbon tetrachloride

7V chlorobenzene

8V chlorodibromomethane

9V chloroethane

10V 2-chloroethylvinyl ether

11V chloroform

12V dichlorobromomethane

14V 1,1-dichloroethane

15V 1,2-dichloroethane

16V 1,1-dichloroethylene

17V 1,2-dichloropropane

18V 1,2-dichloropropylene

19V ethylbenzene

20V methyl bromide

21V methyl chloride

22V methylene chloride

23V 1,1,2,2-tetrachloroethane

24V tetrachloroethylene

25V toluene

26V 1,2-trans-dichloroethylene

27V 1,1,1-trichloroethane

28V 1,1,2-trichloroethane

29V trichloroethylene

31V vinyl chloride

#### Acid Compounds

1A 2-chlorophenol



2A 2,4-dichlorophenol

3A 2,4-dimethylphenol

4A 4,6-dinitro-o-cresol

5A 2,4-dinitrophenol

6A 2-nitrophenol

7A 4-nitrophenol

8A p-chloro-m-cresol

9A pentachlorophenol

10A phenol

11A 2,4,6-trichlorophenol

Base/Neutral

1B acenaphthene

2B acenaphthylene

3B anthracene

4B benzidine

5B benzo(a)anthracene

6B benzo(a)pyrene

7B 3,4-benzofluoranthene

8B benzo(ghi)perylene

9B benzo(k)fluoranthene

10B bis(2-chloroethoxy)methane

11B bis(2-chloroethyl)ether

12B bis(2-chloroisopropyl)ether

13B bis (2-ethylhexyl)phthalate

14B 4-bromophenyl phenyl ether

15B butylbenzyl phthalate

16B 2-chloronaphthalene

17B 4-chlorophenyl phenyl ether

18B chrysene

19B dibenzo(a,h)anthracene

20B 1,2-dichlorobenzene

21B 1,3-dichlorobenzene

22B 1,4-dichlorobenzene

23B 3,3 -dichlorobenzidine

24B diethyl phthalate

25B dimethyl phthalate

26B di-n-butyl phthalate

27B 2,4-dinitrotoluene

28B 2,6-dinitrotoluene

29B di-n-octyl phthalate

30B 1,2-diphenylhydrazine (as azobenzene)

31B fluroranthene

32B fluorene

33B hexachlorobenzene

34B hexachlorobutadiene

35B hexachlorocyclopentadiene

36B hexachloroethane

37B indeno(1,2,3-cd)pyrene

38B isophorone

39B napthalene

40B nitrobenzene

41B N-nitrosodimethylamine

42B N-nitrosodi-n-propylamine

43B N-nitrosodiphenylamine

44B phenanthrene

45B pyrene

46B 1,2,4-trichlorobenzene

Pesticides

1P aldrin

2P alpha-BHC

3P beta-BHC

4P gamma-BHC

5P delta-BHC

6P chlordane

7P 4,4 -DDT

8P 4,4 -DDE

9P 4,4 -DDD

10P dieldrin

11P alpha-endosulfan

12P beta-endosulfan

13P endosulfan sulfate

14P endrin

15P endrin aldehyde

16P heptachlor

17P heptachlor epoxide

18P PCB-1242

19P PCB-1254

20P PCB-1221

21P PCB-1232

22P PCB-1248

23P PCB-1260

24P PCB-1016

25P toxaphene

Table III. -- Other Toxic Pollutants: Metals, Cyanide, and Total Phenols

Antimony, Total

Arsenic, Total

Beryllium, Total

Cadmium, Total

Chromium, Total

Copper, Total

Lead, Total

Mercury, Total

Nickel, Total

Selenium, Total

Silver, Total

Thallium, Total

Zinc, Total

Cyanide, Total

Phenols, Total

Table IV. -- Conventional and Nonconventional Pollutants Required To Be Tested by Existing Dischargers if Expected to be Present

Bromide

Chlorine, Total Residual

Color

Fecal Coliform

Fluoride

Nitrate-Nitrite

Nitrogen, Total Organic

Oil and Grease

Phosphorus, Total

Radioactivity

Sulfate

Sulfide

Sulfite

Surfactants

Aluminum, Total

Barium, Total

Boron, Total

Cobalt, Total

Iron, Total

Magnesium, Total

Molybdenum, Total

Manganese, Total

Tin, Total

Titanium, Total

Table V. -- Toxic Pollutants and Hazardous Substances Required To Be Identified by Existing Dischargers if Expected To Be Present

Toxic Pollutants

Asbestos

Hazardous Substances

Acetaldehyde

Allyl alcohol

Allyl chloride

Amyl acetate

Aniline

Benzonitrile

Benzyl chloride

Butyl acetate

Butylamine

Captan

Carbaryl

Carbofuran

Carbon disulfide

Chlorpyrifos

Coumaphos

Cresol



Crotonaldehyde

Cyclohexane

2,4-D (2,4-Dichlorophenoxy acetic acid)

Diazinon

Dicamba

Dichlobenil

Dichlone

2,2-Dichloropropionic acid

Dichlorvos

Diethyl amine

Dimethyl amine

Dinitrobenzene

Diquat

Disulfoton

Diuron

Epichlorohydrin

Ethanolamine

Ethion

Ethylene diamine

Ethylene dibromide

Formaldehyde

Furfural

Guthion

Isoprene

Isopropanolamine

Kelthane

Kepone

Malathion

Mercaptodimethur

Methoxychlor

Methyl mercaptan

Methyl methacrylate

Methyl parathion

Mevinphos

Mexacarbate

Monoethyl amine

Monomethyl amine

Naled

Napthenic acid

Nitrotoluene

Parathion

Phenolsulfanate

Phosgene

Propargite

Propylene oxide

Pyrethrins

Quinoline

Resorcinol

Strontium

Strychnine

Styrene

2,4,5-T (2,4,5-Trichlorophenoxy acetic acid)

TDE (Tetrachlorodiphenylethane)

2,4,5-TP [2-(2,4,5-Trichlorophenoxy) propanoic acid]

Trichlorofan

Triethylamine

Trimethylamine

Uranium

Vanadium

Vinyl acetate

Xylene

Xylenol

Zirconium

[Note. -- The Environmental Protection Agency has suspended the requirements of § 122.21(g)(7)(ii)(A) and Table I of Appendix D as they apply to certain industrial categories. The suspensions are as follows:

At 46 FR 2046, Jan. 8, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) as it applies to coal mines.

At 46 FR 22585, Apr. 20, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) and the corresponding portions of Item V-C of the NPDES application Form 2c as they apply to:

1. Testing and reporting for all four organic fractions in the Greige Mills Subcategory of the Textile Mills industry (Subpart C -- Low water use processing of 40 CFR Part 410), and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.

2. Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry (Subpart B of 40 CFR Part 440), and testing and reporting for all four fractions in all other subcategories of this industrial category.

3. Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.

At 46 FR 35090, July 1, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(ii)(A) and the corresponding portions of Item V-C of the NPDES application Form 2c as they apply to:

1. Testing and reporting for the pesticide fraction in the Tall Oil Rosin Subcategory (Subpart D) and Rosin-Based Derivatives Subcategory (Subpart F) of the Gum and Wood Chemicals industry (40 CFR Part 454), and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.

2. Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.

3. Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.

4. Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories (Subparts J and U) of the Pulp and Paper industry (40 CFR Part 430); testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink (Subpart Q), Dissolving Kraft (Subpart F), and Paperboard from Waste Paper (Subpart E); testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft (Subpart H), Semi-Chemical (Subparts B and C), and Nonintegrated-Fine Papers (Subpart R); and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft (Subpart I), Dissolving Sulfite Pulp (Subpart K), Groundwood-Fine Papers (Subpart O), Market Bleached Kraft (Subpart G), Tissue from Wastepaper (Subpart T), and Nonintegrated-Tissue Papers (Subpart S).

5. Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

This revision continues these suspensions.]

For the duration of the suspensions, therefore, Table I effectively reads:

Table I. -- Testing Requirements for Organic Toxic Pollutants by Industry Category

Industry category	GC/MS fraction n1			
	Volatile	Acid	Neutral	Pesticide
Adhesives and sealants	(*)	(*)	(*)	
Aluminum forming	(*)	(*)	(*)	
Auto and other laundries	(*)	(*)	(*)	(*)
Battery manufacturing	(*)		(*)	
Coal mining				
Coil coating	(*)	(*)	(*)	
Copper forming	(*)	(*)	(*)	
Electric and electronic compounds	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	
Explosives manufacturing		(*)	(*)	
Foundries	(*)	(*)	(*)	
Gum and wood (all subparts except D and F)	(*)	(*)		
Subpart D -- tall oil rosin	(*)	(*)	(*)	
Subpart F -- rosin-based derivatives	(*)	(*)	(*)	
Inorganic chemicals manufacturing	(*)	(*)	(*)	
Iron and steel manufacturing	(*)	(*)	(*)	
Leather tanning and finishing	(*)	(*)	(*)	

Mechanical products manufacturing	(*)	(*)	(*)	
Nonferrous metals manufacturing	(*)	(*)	(*)	(*)
Ore mining (applies to the base and precious metals/subpart B)		(*)		
Organic chemicals manufacturing	(*)	(*)	(*)	(*)
Paint and ink formulation	(*)	(*)	(*)	
Pesticides	(*)	(*)	(*)	(*)
Petroleum refining	(*)			
Pharmaceutical preparations	(*)	(*)	(*)	
Photographic equipment and supplies	(*)	(*)	(*)	
Plastic and synthetic materials manufacturing	(*)	(*)	(*)	(*)
Plastic processing	(*)			
Porcelain enameling				
Printing and publishing	(*)	(*)	(*)	(*)
Pulp and paperboard mills -- see footnote n2				
Rubber processing	(*)	(*)	(*)	
Soap and detergent manufacturing	(*)	(*)	(*)	
Steam electric power plants	(*)	(*)		
Textile mills (subpart C -- Greige Mills are exempt from this table)	(*)	(*)	(*)	
Timber products processing	(*)	(*)	(*)	(*)

\*Testing required.

n1 The pollutants in each fraction are listed in item V-C.

n2 Pulp and Paperboard Mills:

Subpart #	GS/MS fractions			
	VOA	Acid	Base/neutral	Pesticides
A	--	(*)	--	(*)
B	--	(*)	--	--
C	--	(*)	--	--
D	--	(*)	--	--
E	(*)	(*)	--	(*)
F	(*)	(*)	--	--
G	(*)	(*)	--	--
H	(*)	(*)	--	--
I	(*)	(*)	--	--
J	(*)	(*)	(*)	--

K	(*)	(*)	--	--
L	(*)	(*)	--	--
M	(*)	(*)	--	--
N	(*)	(*)	--	--
O	(*)	(*)	--	--
P	(*)	(*)	--	--
Q	(*)	(*)	--	(*)
R	--	(*)	--	--
S	(*)	(*)	--	(*)
T	(*)	(*)	--	(*)
U	(*)	(*)	(*)	--

\*Must test.

-- Do not test unless "reason to believe" it is dis charged.

# Subparts are defined in 40 CFR Part 430.

Part 123 is revised to read as follows:

#### PART 123 -- STATE PROGRAM REQUIREMENTS

##### Subpart A -- General

Sec.

123.1 Purpose and scope.

123.2 Definitions.

123.3 Coordination with other programs.

##### Subpart B -- State Program Submissions

123.21 Elements of a program submission.

123.22 Program description.

123.23 Attorney General's Statement.

123.24 Memorandum of Agreement with the Regional Administrator.

123.25 Requirements for permitting.

123.26 Requirements for compliance evaluation programs.

123.27 Requirements for enforcement authority.

123.28 Control of disposal of pollutants into wells.

123.29 Prohibition.

Subpart C -- Transfer of Information and Permit Review

123.41 Sharing of information.

123.42 Receipt and use of Federal information.

123.43 Transmission of information to EPA.

123.44 EPA review of and objections to State permits.

123.45 Noncompliance and program reporting by the Director.

Subpart D -- Program Approval, Revision and Withdrawal

123.61 Approval process.

123.62 Procedures for revision of State programs.

123.63 Criteria for withdrawal of State programs.

123.64 Procedures for withdrawal of State programs.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Subpart A -- General

§ 123.1 Purpose and scope.

(a) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State programs and the requirements State programs must meet to be approved by the Administrator under Sections 318, 402, and 405



(National Pollutant Discharge Elimination System -- NPDES) of CWA.

(b) These regulations are promulgated under the authority of sections 304(i) and 101(e) of CWA, and implement the requirements of those sections.

(c) The Administrator shall approve State programs which conform to the applicable requirements of this Part. A State NPDES program will not be approved by the Administrator under section 402 of CWA unless it has authority to control the discharges specified in sections 318 and 405(a) of CWA. Permit programs under sections 318 and 405 will not be approved independent of a section 402 permit program.

(d) Upon approval of a State program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program. After program approval EPA shall retain jurisdiction over any permits (including general permits) which it has issued unless arrangements have been made with the State in the Memorandum of Agreement for the State to assume responsibility for these permits. Retention of jurisdiction shall include the processing of any permit appeals, modification requests, or variance requests; the conduct of inspections, and the receipt and review of self-monitoring reports. If any permit appeal, modification request or variance request is not finally resolved when the Federally issued permit expires, EPA may, with the consent of the State, retain jurisdiction until the matter is resolved.

(e) Upon submission of a complete program, EPA will conduct a public hearing, if interest is shown, and determine whether to approve or disapprove the program taking into consideration the requirements of this part, the CWA and any comments received.

(f) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this Part.

(g) No partial NPDES programs will be approved by EPA. The State program must prohibit (except as provided in § 122.3) all point source discharges of pollutants, all discharges into aquaculture projects, and all disposal of sewage sludge which results in any pollutant from such sludge entering into any waters of the United States within the State's jurisdiction, except as authorized by a permit in effect under the State program or under section 402 of CWA. NPDES authority may be shared by two or more State agencies but each agency must have Statewide jurisdiction over a class of activities or discharges. When more than one agency is responsible for issuing permits, each agency must make a submission meeting the requirements of § 123.21 before EPA will begin formal review.

(h) A State's lack of authority to regulate activities on Indian lands does not impair a State's ability to obtain full program approval in accordance with this Part, i.e., inability of a State to regulate activities on Indian lands does not constitute a partial program. EPA will administer the program on Indian lands if the State does not seek this authority.

[Note. -- States are advised to contact the United States Department of the Interior, Bureau of Indian Affairs, concerning authority over Indian lands.]

(i) Nothing in this Part precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this Part;

(2) Operating a program with a greater scope of coverage than that required under this Part. If an approved State program has greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program.

[Note. -- For example, if a State requires permits for discharges into publicly owned treatment works, these permits are not NPDES permits.]

## § 123.2 Definitions.

The definitions in Part 122 apply to all subparts of this Part.

## § 123.3 Coordination with other programs.

Issuance of State permits under this Part may be coordinated with issuance of RCRA, UIC, NPDES, and 404 permits whether they are controlled by the State, EPA, or the Corps of Engineers. See § 124.4.

## Subpart B -- State Program Submissions

### § 123.21 Elements of a program submission.

(a) Any State that seeks to administer a program under this Part shall submit to the Administrator at least three copies of a program submission. The submission shall contain at least three copies of the following:

- (1) A letter from the Governor of the State requesting program approval;
- (2) A complete program description, as required by § 123.22, describing how the State intends to carry out its responsibilities under this Part;
- (3) An Attorney General's statement as required by § 123.23;
- (4) A Memorandum of Agreement with the Regional Administrator as required by § 123.24;
- (5) Copies of all applicable State statutes and regulations, including those governing State administrative procedures;

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the statutory review period (i.e., the period of time allotted for formal EPA review of a proposed State program under CWA) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the statutory review period shall not begin until all the necessary information is received by EPA.

(c) If the State's submission is materially changed during the statutory review period, the statutory review period shall begin again upon receipt of the revised submission.

(d) The State and EPA may extend the statutory review period by agreement.

### § 123.22 Program description.

Any State that seeks to administer a program under this Part shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under an interstate compact. The program description shall include:

- (a) A description in narrative form of the scope, structure, coverage and processes of the State program.
- (b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a "lead agency" to facilitate communications between EPA and the State agencies having program responsibility. If the State proposes to administer a program of greater scope of coverage than is required by

Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding.

(c) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures;

(d) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program. Forms used by States need not be identical to the forms used by EPA but should require the same basic information, except that State NPDES programs are required to use standard Discharge Monitoring Reports (DMR). The State need not provide copies of uniform national forms it intends to use but should note its intention to use such forms.

[Note. -- States are encouraged to use uniform national forms established by the Administrator. If uniform national forms are used, they may be modified to include the State Agency's name, address, logo, and other similar information, as appropriate, in place of EPA's.]

(e) A complete description of the State's compliance tracking and enforcement programs.

#### § 123.23 Attorney General's statement.

(a) Any State that seeks to administer a program under this Part shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel) that the laws of the State, or an interstate compact, provide adequate authority to carry out the program described under § 123.22 and to meet the requirements of this Part. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program.

[Note. -- EPA will supply States with an Attorney General's statement format on request.]

(b) If a State seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

(c) The Attorney General's statement shall certify that the State has adequate legal authority to issue and enforce general permits if the State seeks to implement the general permit program under § 122.28.

#### § 123.24 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this Part shall submit a Memorandum of Agreement. The

Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this Part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). If existing permits are transferred from EPA to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

[Note. -- For example, EPA and the State and the permittee could agree that the State would issue a permit(s) identical to the outstanding Federal permit which would simultaneously be terminated.]

(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection.

(3) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate. These procedures shall implement the requirements of § 123.43.

(4) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(5) When appropriate, provisions for joint processing of permits by the State and EPA for facilities or activities which require permits from both EPA and the State under different programs. (See § 124.4.)

[Note. -- To promote efficiency and to avoid duplication and inconsistency, States are encouraged to enter into joint processing agreements with EPA for permit issuance. Likewise, States are encouraged (but not required) to consider steps to coordinate or consolidate their own permit programs and activities.]

(6) Provisions for modification of the Memorandum of Agreement in accordance with this Part.

(c) The Memorandum of Agreement, the annual program grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this part. The State/EPA Agreement may not override the Memorandum of Agreement.

[Note. -- Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. However, it may still be appropriate to specify in the MOA the basis for such detailed agreements, e.g., a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA agreement.]

(d) The Memorandum of Agreement shall also specify the extent to which EPA will waive its right to review, object to, or comment upon State-issued permits under sections 402(d)(3), (e) or (f) of CWA. While the Regional Administrator and the State may agree to waive EPA review of certain "classes or categories" of permits, no waiver of review may be granted for the following discharges:

- (1) Discharges into the territorial sea;
- (2) Discharges which may affect the waters of a State other than the one in which the discharge originates;
- (3) Discharges proposed to be regulated by general permits (see § 122.28);
- (4) Discharges from publicly owned treatment works with a daily average discharge exceeding 1 million gallons per day;
- (5) Discharges of uncontaminated cooling water with a daily average discharge exceeding 500 million gallons per day;
- (6) Discharges from any major discharger or from any discharger within any of the 21 industrial categories listed in Appendix A to Part 122;
- (7) Discharges from other sources with a daily average discharge exceeding 0.5 (one-half) million gallons per day, except that EPA review of permits for discharges of non-process wastewater may be waived regardless of flow.

(e) Whenever a waiver is granted under paragraph (d) of this section, the Memorandum of Agreement shall contain:

- (1) A statement that the Regional Administrator retains the right to terminate the waiver as to future permit actions, in whole or in part, at any time by sending the State Director written notice of termination; and
- (2) A statement that the State shall supply EPA with copies of final permits.

#### § 123.25 Requirements for permitting.

(a) All State programs under this Part must have legal authority to implement each of the following provisions and must be administered in conformance with each; except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

- (1) § 122.4 -- (Prohibitions);
- (2) § 122.5(a) and (b) -- (Effect of permit);
- (3) § 122.7(b)-(d) -- (Confidential information);
- (4) § 122.21(a)-(b), (e)-(j), and (l)-(o) -- (Application for a permit);
- (5) § 122.22 -- (Signatories);
- (6) § 122.23 -- (Concentrated animal feeding operations);
- (7) § 122.24 -- (Concentrated aquatic animal production facilities);
- (8) § 122.25 -- (Aquaculture projects);
- (9) § 122.26 -- (Separate storm sewers);

- (10) § 122.27 -- (Silviculture);
- (11) § 122.28 -- (General permits), *provided that* States which do not seek to implement the general permit program under § 122.28 need not do so.
- (12) § 122.41 -- (Applicable permit conditions);
- (13) § 122.42 -- (Conditions applicable to specified categories of permits);
- (14) § 122.43 -- (Establishing permit conditions);
- (15) § 122.44 -- (Establishing NPDES permit conditions);
- (16) § 122.45 -- (Calculating permit conditions);
- (17) § 122.46 -- (Duration);
- (18) § 122.47(a) -- (Schedules of compliance);
- (19) § 122.48 -- (Monitoring requirements);
- (20) § 122.50 -- (Disposal into wells);
- (21) § 122.61 -- (Permit transfer);
- (22) § 122.62 -- (Permit modification);
- (23) § 122.64 -- (Permit termination);
- (24) § 124.3(a) -- (Application for a permit);
- (25) § 124.5 (a), (c), (d), and (f) -- (Modification of permits);
- (26) § 124.6 (a), (c), (d), and (e) -- (Draft permit);
- (27) § 124.8 -- (Fact sheets);
- (28) § 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e) -- (Public notice);
- (29) § 124.11 -- (Public comments and requests for hearings);
- (30) § 124.12(a) -- (Public hearings); and
- (31) § 124.17 (a) and (c) -- (Response to comments);
- (32) § 124.56 -- (Fact sheets);
- (33) § 124.57(a) -- (Public notice);
- (34) § 124.59 -- (Comments from government agencies);
- (35) § 124.62 -- (Decision on variances);
- (36) Subparts A, B, C, D, H, I, J, K and L of Part 125; and

(37) 40 CFR Parts 129, 133, and Subchapter N.

[Note. -- States need not implement provisions identical to the above listed provisions. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. While States may impose more stringent requirements, they may not make one requirement more lenient as a tradeoff for making another requirement more stringent; for example, by requiring that public hearings be held prior to issuing any permit while reducing the amount of advance notice of such a hearing.

State programs may, if they have adequate legal authority, implement any of the provisions of Parts 122 and 124. See, for example, § 122.5(d) (continuation of permits) and § 124.4 (consolidation of permit processing).

For example, a State may impose more stringent requirements in an NPDES program by omitting the upset provision of § 122.41 or by requiring more prompt notice of an upset.]

(b) State NPDES programs shall have an approved continuing planning process under 40 CFR 35.1500 and shall assure that the approved planning process is at all times consistent with CWA.

(c) State NPDES programs shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous 2 years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(1) For the purposes of this paragraph:

(i) "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal.

(ii) "Significant portion of income" means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

(iii) "Permit holders or applicants for a permit" does not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(iv) "Income" includes retirement benefits, consultant fees, and stock dividends.

(2) For the purposes of paragraph (c) of this section, income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.

#### § 123.26 Requirements for compliance evaluation programs.

(a) State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports).

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall maintain:

(1) A program which is capable of making comprehensive surveys of all facilities and activities subject to the State Director's authority to identify persons subject to regulation who have failed to comply with permit application or other program requirements. Any compilation, index or inventory of such facilities and activities shall be made available to the Regional Administrator upon request;

(2) A program for periodic inspections of the facilities and activities subject to regulation. These inspections shall be conducted in a manner designed to:

- (i) Determine compliance or noncompliance with issued permit conditions and other program requirements;
- (ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data; and
- (iii) Verify the adequacy of sampling, monitoring, and other methods used by permittees and other regulated persons to develop that information;

(3) A program for investigating information obtained regarding violations of applicable program and permit requirements; and

(4) Procedures for receiving and ensuring proper consideration of information submitted by the Public about violations. Public effort in reporting violations shall be encouraged, and the State Director shall make available information on reporting procedures.

(c) The State Director and State officers engaged in compliance evaluation shall have authority to enter any site or premises subject to regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with the State program including compliance with permit conditions and other program requirements. States whose law requires a search warrant before entry conform with this requirement.

(d) Investigatory inspections shall be conducted, samples shall be taken and other information shall be gathered in a manner (e.g., using proper "chain of custody" procedures) that will produce evidence admissible in an enforcement proceeding or in court.

(e) State NPDES compliance evaluation programs shall have procedures and ability for:

(1) Maintaining a comprehensive inventory of all sources covered by NPDES permits and a schedule of reports required to be submitted by permittees to the State agency;

(2) Initial screening (i.e., pre-enforcement evaluation) of all permit or grant-related compliance information to identify violations and to establish priorities for further substantive technical evaluation;

(3) When warranted, conducting a substantive technical evaluation following the initial screening of all permit or grant-related compliance information to determine the appropriate agency response;

(4) Maintaining a management information system which supports the compliance evaluation activities of this Part; and

(5) Inspecting the facilities of all major dischargers at least annually.

#### § 123.27 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment;

[Note. -- Paragraph (a)(1) requires that States have a mechanism (e.g., an administrative cease and desist order or



the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.]

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement, including permit conditions, without the necessity of a prior revocation of the permit;

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) Civil penalties shall be recoverable for the violation of any NPDES permit condition; any NPDES filing requirement; any duty to allow or carry out inspection, entry or monitoring activities; or, any regulation or orders issued by the State Director. These penalties shall be assessable in at least the amount of \$5,000 a day for each violation.

(ii) Criminal fines shall be recoverable against any person who willfully or negligently violates any applicable standards or limitations; any NPDES permit condition; or any NPDES filing requirement. These fines shall be assessable in at least the amount of \$10,000 a day for each violation.

[Note. -- States which provide the criminal remedies based on "criminal negligence," "gross negligence" or strict liability satisfy the requirement of paragraph (a)(3)(iii)(B) of this section.]

(iii) Criminal fines shall be recoverable against any person who knowingly makes any false statement, representation or certification in any NPDES form, in any notice or report required by an NPDES permit, or who knowingly renders inaccurate any monitoring device or method required to be maintained by the Director. These fines shall be recoverable in at least the amount of \$5,000 for each instance of violation.

[Note. -- In many States the State Director will be represented in State courts by the State Attorney General or other appropriate legal officer. Although the State Director need not appear in court actions he or she should have power to request that any of the above actions be brought.]

(b)(1) The maximum civil penalty or criminal fine (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the appropriate Act;

[Note. -- For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.]

(c) Any civil penalty assessed, sought or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation. A civil penalty agreed upon by the State Director in settlement of administrative or judicial litigation may be adjusted by a percentage which represents the likelihood of success in establishing the underlying violation(s) in the litigation. If this civil penalty, together with the costs of expeditious compliance, would be so severely disproportionate to the resources of the violator as to jeopardize continuance in business, the payment of the penalty may be deferred or the penalty may be forgiven in whole or part, as circumstances warrant. In the case of a penalty for a failure to meet a statutory or final permit compliance deadline, "appropriate to the violation" as used in this paragraph, means a penalty which is equal to:

(1) An amount appropriate to redress the harm or risk to public health or the environment; plus

(2) An amount appropriate to remove the economic benefit gained or to be gained from delayed compliance; plus

(3) An amount appropriate as a penalty for the violator's degree of recalcitrance, defiance, or indifference to

requirements of the law; plus

(4) An amount appropriate to recover unusual or extraordinary enforcement costs thrust upon the public; minus

(5) An amount, if any, appropriate to reflect any part of the noncompliance attributable to the government itself; and minus

(6) An amount appropriate to reflect any part of the noncompliance caused by factors completely beyond the violator's control (*e.g.*, floods, fires).

[Note. -- In addition to the requirements of this paragraph, the State may have other enforcement remedies. The following enforcement options, while not mandatory, are highly recommended:

Procedures which enable the State to assess or to sue any persons responsible for unauthorized activities for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon human health and the environment resulting from the unauthorized activity, whether or not accidental;

Procedures which enable the State to sue for compensation for any loss or destruction of wildlife, fish or aquatic life, or their habitat, and for any other damages caused by unauthorized activity, either to the State or to any residents of the State who are directly aggrieved by the unauthorized activity, or both; and

Procedures for the administrative assessment of penalties by the Director.]

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraphs (a)(1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in § 123.26(b)(4);

(ii) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

#### § 123.28 Control of disposal of pollutants into wells.

State law must provide authority to issue permits to control the disposal of pollutants into wells. Such authority shall enable the State to protect the public health and welfare and to prevent the pollution of ground and surface waters by prohibiting well discharges or by issuing permits for such discharges with appropriate permit terms and conditions. A program approved under section 1422 of SDWA satisfies the requirements of this section.

[Note. -- States which are authorized to administer the NPDES permit program under section 402 of CWA are encouraged to rely on existing statutory authority, to the extent possible, in developing a State UIC program under section 1422 of SDWA. Section 402(b)(1)(D) of CWA requires that NPDES States have the authority "to issue permits which \* \* \* control the disposal of pollutants into wells." In many instances, therefore, NPDES States will have existing statutory authority to regulate well disposal which satisfies the requirements of the UIC program. Note, however, that CWA excludes certain types of well injections from the definition of "pollutant." If the State's statutory authority

contains a similar exclusion it may need to be modified to qualify for UIC program approval.]

§ 123.29 Prohibition.

State permit programs shall provide that no permit shall be issued when the Regional Administrator has objected in writing under § 123.44.

Subpart C -- Transfer of Information and Permit Review

§ 123.41 Sharing of information.

(a) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this section. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2. If EPA obtains from a State information that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA shall furnish to States with approved programs the information in its files not submitted under a claim of confidentiality which the State needs to implement its approved program. EPA shall furnish to States with approved programs information submitted to EPA under a claim of confidentiality, which the State needs to implement its approved program, subject to the conditions in 40 CFR Part 2.

§ 123.42 Receipt and use of Federal information.

Upon approving a State permit program, EPA shall send to the State agency administering the permit program any relevant information which was collected by EPA. The Memorandum of Agreement under § 123.24 shall provide for the following, in such manner as the State Director and the Regional Administrator shall agree:

(a) Prompt transmission to the State Director from the Regional Administrator of copies of any pending permit applications or any other relevant information collected before the approval of the State permit program and not already in the possession of the State Director. When existing permits are transferred to the State Director (e.g., for purposes of compliance monitoring, enforcement or reissuance), relevant information includes support files for permit issuance, compliance reports and records of enforcement actions.

(b) Procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Regional Administrator which the Regional Administrator identifies as incomplete or otherwise deficient until the State Director receives information sufficient to correct the deficiency.

§ 123.43 Transmission of information to EPA.

(a) Each State agency administering a permit program shall transmit to the Regional Administrator copies of permit program forms and any other relevant information to the extent and in the manner agreed to by the State Director and Regional Administrator in the Memorandum of Agreement and not inconsistent with this Part. Proposed permits shall be prepared by State agencies unless agreement to the contrary has been reached under § 123.44(j). The Memorandum of Agreement shall provide for the following:

(1) Prompt transmission to the Regional Administrator of a copy of all complete permit applications received by the State Director, except those for which permit review has been waived under § 123.24(d). The State shall supply EPA with copies of permit applications for which permit review has been waived whenever requested by EPA;

(2) Prompt transmission to the Regional Administrator of notice of every action taken by the State agency related to the consideration of any permit application or general permit, including a copy of each proposed or draft permit and any

conditions, requirements, or documents which are related to the proposed or draft permit or which affect the authorization of the proposed permit, except those for which permit review has been waived under § 123.24(d). The State shall supply EPA with copies of notices for which permit review has been waived whenever requested by EPA; and

(3) Transmission to the Regional Administrator of a copy of every issued permit following issuance, along with any and all conditions, requirements, or documents which are related to or affect the authorization of the permit.

(b) The State shall transmit a copy of each draft general permit or proposed general permit, except those for separate storm sewers, to the EPA Director, Office of Water Enforcement and Permits at the same time the draft general permit or proposed general permit is transmitted to the Regional Administrator under paragraph (a)(2) of this section.

(c) The State program shall provide for transmission by the State Director to EPA of:

(1) Notices from publicly owned treatment works under § 122.42(b) and 40 CFR Part 403, upon request of the Regional Administrator;

(2) A copy of any significant comments presented in writing pursuant to the public notice of a draft permit and a summary of any significant comments presented at any hearing on any draft permit, except those comments regarding permits for which permit review has been waived under § 123.24(d) and for which EPA has not otherwise requested receipt, if:

(i) The Regional Administrator requests this information; or

(ii) The proposed permit contains requirements significantly different from those contained in the tentative determination and draft permit; or

(iii) Significant comments objecting to the tentative determination and draft permit have been presented at the hearing or in writing pursuant to the public notice.

(d) Any State permit program shall keep such records and submit to the Administrator such information as the Administrator may reasonably require to ascertain whether the State program complies with the requirements of CWA or of this Part.

#### § 123.44 EPA Review of and objections to State permits.

(a)(1) The Memorandum of Agreement shall provide a period of time (up to 90 days from receipt of proposed permits) to which the Regional Administrator may make general comments upon, objections to, or recommendations with respect to proposed permits. EPA reserves the right to take 90 days to supply specific grounds for objection, notwithstanding any shorter period specified in the Memorandum of Agreement, when a general objection is filed within the review period specified in the Memorandum of Agreement. The Regional Administrator shall send a copy of any comment, objection or recommendation to the permit applicant.

(2) In the case of general permits, EPA shall have 90 days from the date of receipt of the proposed general permit to comment upon, object to or make recommendations with respect to the proposed general permit, and is not bound by any shorter time limits set by the Memorandum of Agreement for general comments, objections or recommendations. The EPA Director, Office of Water Enforcement and Permits may comment upon, object to, or make recommendations with respect to proposed general permits, except those for separate storm sewers, on EPA's behalf.

(b)(1) Within the period of time provided under the Memorandum of Agreement for making general comments upon, objections to or recommendations with respect to proposed permits, the Regional Administrator shall notify the State Director of any objection to issuance of a proposed permit (except as provided in paragraph (a)(2) of this section

for proposed general permits). This notification shall set forth in writing the general nature of the objection.

(2) Within 90 days following receipt of a proposed permit to which he or she has objected under (b)(1) of this section, or in the case of general permits within 90 days after receipt of the proposed general permit, the Regional Administrator, or in the case of general permits other than for separate storm sewers, the Regional Administrator or the EPA Director, Office of Water Enforcement and Permits, shall set forth in writing and transmit to the State Director:

(i) A statement of the reasons for the objection (including the section of CWA or regulations that support the objection), and

(ii) The actions that must be taken by the State Director to eliminate the objection (including the effluent limitations and conditions which the permit would include if it were issued by the Regional Administrator.)

[Note. -- Paragraphs (a) and (b) of this section, in effect, modify any existing agreement between EPA and the State which provides less than 90 days for EPA to supply the specific grounds for an objection. However, when an agreement provides for an EPA review period of less than 90 days, EPA must file a general objection, in accordance with paragraph (b)(1) of this section within the time specified in the agreement. This general objection must be followed by a specific objection within the 90-day period. This modification to MOA's allows EPA to provide detailed information concerning acceptable permit conditions, as required by section 402(d) of CWA. To avoid possible confusion, MOA's should be changed to reflect this arrangement.]

(c) The Regional Administrator's objection to the issuance of a proposed permit must be based upon one or more of the following grounds:

(1) The permit fails to apply, or to ensure compliance with, any applicable requirement of this Part;

[Note. -- For example, the Regional Administrator may object to a permit not requiring the achievement of required effluent limitations by applicable statutory deadlines.]

(2) In the case of a proposed permit for which notification to the Administrator is required under section 402(b)(5) of CWA, the written recommendations of an affected State have not been accepted by the permitting State and the Regional Administrator finds the reasons for rejecting the recommendations are inadequate;

(3) The procedures followed in connection with formulation of the proposed permit failed in a material respect to comply with procedures required by CWA or by regulations thereunder or by the Memorandum of Agreement;

(4) Any finding made by the State Director in connection with the proposed permit misinterprets CWA or any guidelines or regulations under CWA, or misapplies them to the facts;

(5) Any provisions of the proposed permit relating to the maintenance of records, reporting, monitoring, sampling, or the provision of any other information by the permittee are inadequate, in the judgment of the Regional Administrator, to assure compliance with permit conditions, including effluent standards and limitations required by CWA, by the guidelines and regulations issued under CWA, or by the proposed permit;

(6) In the case of any proposed permit with respect to which applicable effluent standards and limitations under sections 301, 302, 306, 307, 318, 403 and 405 of CWA have not yet been promulgated by the Agency, the proposed permit, in the judgment of the Regional Administrator, fails to carry out the provisions of CWA or of any regulations issued under CWA; the provisions of this subparagraph apply to determinations made pursuant to § 125.3(c)(2) in the absence of applicable guidelines and to best management practices under section 304(e) of CWA, which must be incorporated into permits as requirements under sections 301, 306, 307, 318, 403 or 405, as the case may be;

(7) Issuance of the proposed permit would in any other respect be outside the requirements of CWA, or regulations

issued under CWA.

(d) Prior to notifying the State Director of an objection based upon any of the grounds set forth in paragraph (b) of this section, the Regional Administrator:

(1) Shall consider all data transmitted pursuant to § 123.43;

(2) May, if the information provided is inadequate to determine whether the proposed permit meets the guidelines and requirements of CWA, request the State Director to transmit to the Regional Administrator the complete record of the permit proceedings before the State, or any portions of the record that the Regional Administrator determines are necessary for review. If this request is made within 30 days of receipt of the State submittal under § 123.43, it shall constitute an interim objection to the issuance of the permit, and the full period of time specified in the Memorandum of Agreement for the Regional Administrator's review shall recommence when the Regional Administrator has received such record or portions of the record; and

(3) May, in his or her discretion, and to the extent feasible within the period of time available under the Memorandum of Agreement, afford to interested persons an opportunity to comment on the basis for the objection;

(e) Within 90 days of receipt by the State Director of an objection by the Regional Administrator, the State or interstate agency or any interested person may request that a public hearing be held by the Regional Administrator on the objection. A public hearing in accordance with the procedures of § 124.12 (c) and (d) shall be held, and public notice provided in accordance with § 124.10, whenever requested by the State or the interstate agency which proposed the permit or if warranted by significant public interest based on requests received.

(f) A public hearing held under paragraph (e) of this section shall be conducted by the Regional Administrator, and, at the Regional Administrator's discretion, with the assistance of an EPA panel designated by the Regional Administrator, in an orderly and expeditious manner.

(g) Following the public hearing, the Regional Administrator shall reaffirm the original objection, modify the terms of the objection, or withdraw the objection, and shall notify the State of this decision.

(h)(1) If no public hearing is held under paragraph (e) of this section and the State does not resubmit a permit revised to meet the Regional Administrator's objection within 90 days of receipt of the objection, the Regional Administrator may issue the permit in accordance with Parts 121, 122, and 124 of this chapter and any other guidelines and requirements of CWA.

(2) If a public hearing is held under paragraph (e) of this section, the Regional Administrator does not withdraw the objection, and the State does not resubmit a permit revised to meet the Regional Administrator's objection or modified objection within 30 days of the date of the Regional Administrator's notification under paragraph (g) of this section, the Regional Administrator may issue the permit in accordance with Parts 121, 122, and 124 of this chapter and any other guidelines and requirements of CWA.

(3) Exclusive authority to issue the permit passes to EPA when the times set out in this paragraph expire.

(i) In the case of proposed general permits for discharges other than from separate storm sewers insert "or the EPA Director, Office of Water Enforcement and Permits" after "Regional Administrator" whenever it appears in paragraphs (c)-(h) of this section.

(j) The Regional Administrator may agree, in the Memorandum of Agreement under § 123.24, to review draft permits rather than proposed permits. In such a case, a proposed permit need not be prepared by the State and transmitted to the Regional Administrator for review in accordance with this section unless the State proposes to issue a permit which differs from the draft permit reviewed by the Regional Administrator, the Regional Administrator has

objected to the draft permit, or there is significant public comment.

§ 123.45 Noncompliance and program reporting by the Director.

The Director shall prepare quarterly and annual reports as detailed below. When the State is the permit-issuing authority, the State Director shall submit any reports required under this section to the Regional Administrator. When EPA is the permit-issuing authority, the Regional Administrator shall submit any report required under this section to EPA Headquarters.

(a) *Quarterly reports.* The Director shall submit quarterly narrative reports for major facilities as follows:

(1) *Format.* The report shall use the following format:

(i) Provide a separate list on NPDES permittees which shall be subcategorized as non-POTWs, POTWs, and Federal permittees;

(ii) For facilities or activities with permits under more than one program, provide an additional listing combining information on noncompliance for each such facility;

(iii) Alphabetize each list by permittee name. When two or more permittees have the same name, the lowest permit number shall be entered first.

(iv) For each entry on a list, include the following information in the following order:

(A) Name, location, and permit number of the noncomplying permittee.

(B) A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one or more of the kinds set forth in paragraph (a)(2) of this section. When a permittee has noncompliance of more than one kind under a single program, combine the information into a single entry for each such permittee.

(C) The date(s) and a brief description of the action(s) taken by the Director to ensure compliance.

(D) Status of the instance(s) of noncompliance with the date of the review of the status or the date of resolution.

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) *Instances of noncompliance to be reported.* Any instances of noncompliance within the following categories shall be reported in successive reports until the noncompliance is reported as resolved. Once noncompliance is reported as resolved it need not appear in subsequent reports.

(i) *Failure to complete construction elements:* When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction (for example, award of a contract, preliminary plans), or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required element of the schedule within 30 days from the date a compliance schedule report is due under the permit.

(ii) *Modifications to schedules of compliance:* When a schedule of compliance in the permit has been modified under §§ 122.62 or 122.64 because of the permittee's noncompliance.

(iii) *Failure to complete or provide compliance schedule or monitoring reports:* When the permittee has failed to complete or provide a report required in a permit compliance schedule (for example, progress reports or notice of noncompliance or compliance) or a monitoring report; and the permittee has not submitted the complete report within 30 days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for

monitoring reports.

(iv) *Deficient reports:* When the required reports provided by the permittee are so deficient as to cause misunderstanding by the Director and thus impede the review of the status of compliance.

(v) *Noncompliance with other permit requirements:* Noncompliance shall be reported in the following circumstances:

(A) Whenever the permittee has violated a permit requirement (other than paragraph (a)(2) (i) or (ii) of this section), and has not returned to compliance within 45 days from the date reporting of noncompliance was due under the permit, or

(B) When the Director determines that a pattern of noncompliance exists for a major facility permittee over the most recent four consecutive reporting periods. This pattern of noncompliance is based on violations of monthly averages and excludes parameters for which there is continuous monitoring. This pattern includes any violation of the same requirement in two consecutive reporting periods, and any violation of one or more requirements in each of four consecutive reporting periods; or

(C) When the Director determines significant permit noncompliance or other significant event has occurred, such as a discharge of a toxic or hazardous substance by an NPDES facility.

(vi) *All other.* Statistical information shall be reported quarterly on all other instances of noncompliance by major facilities with permit requirements not otherwise reported under paragraph (a) of this section.

(b) *Annual reports for NPDES.*

(1) *Annual noncompliance report.* Statistical reports shall be submitted by the Director on nonmajor NPDES permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in paragraph (a) of this section.

(2) A separate list of nonmajor discharges which are one or more years behind in construction phases of the compliance schedule shall also be submitted in alphabetical order by name and permit number.

(c) *Schedule.*

(1) *For all quarterly reports.* On the last working day of May, August, November, and February, the State Director shall submit to the Regional Administrator information concerning noncompliance with NPDES permit requirements by major dischargers in the State in accordance with the following schedule. The Regional Administrator shall prepare and submit information for EPA-issued permits to EPA Headquarters in accordance with the same schedule:

Quarters covered by reports on noncompliance by major dischargers:

[Date for completion of reports]

January, February, and March

n1 May 31

April, May, and June

n1 August 31

July, August, and September

n1 November 30

October, November, and December

n1 February 28



n1 Reports must be made available to the public for inspection and copying on this date.

(2) *For all annual reports.* The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.

#### Subpart D -- Program Approval, Revision, and Withdrawal

##### § 123.61 Approval process.

(a) After determining that a State program submission is complete, EPA shall publish notice of the State's application in the Federal Register, and in enough of the largest newspapers in the State to attract statewide attention, and shall mail notice to persons known to be interested in such matters, including all persons on appropriate State and EPA mailing lists and all permit holders and applicants within the State. The notice shall:

(1) Provide a comment period of not less than 45 days during which interested members of the public may express their views on the State program;

(2) Provide for a public hearing within the State to be held no less than 30 days after notice is published in the Federal Register;

(3) Indicate the cost of obtaining a copy of the State's submission;

(4) Indicate where and when the State's submission may be reviewed by the public;

(5) Indicate when an interested member of the public should contact with any questions; and

(6) Briefly outline the fundamental aspects of the State's proposed program, and the process for EPA review and decision.

(b) Within 90 days of the receipt of a complete program submission under § 123.21 the Administrator shall approve or disapprove the program based on the requirements of this Part and of CWA and taking into consideration all comments received. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received and explains the Agency's response to these comments.

(c) If the Administrator approves the State's program he or she shall notify the State and publish notice in the Federal Register. The Regional Administrator shall suspend the issuance of permits by EPA as of the date of program approval.

(d) If the Administrator disapproves the State program he or she shall notify the State of the reasons for disapproval and of any revisions or modifications to the State program which are necessary to obtain approval.

##### § 123.62 Procedure for revision of State programs.

(a) Either EPA or the approved State may initiate program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances.

(2) Whenever EPA determines that the proposed program modification is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in the Federal Register and in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing. Such a hearing will be held if there is significant public interest based on requests received.

(3) The Administrator shall approve or disapprove program revisions based on the requirements of this Part and of the CWA.

(4) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the Federal Register. Notice of approval of non-substantial program revisions may be given by a letter from the Administrator to the State Governor or his designee.

(c) States with approved programs shall notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator under paragraph (b) of this section. Organizational charts required under § 123.22(b) shall be revised and resubmitted.

(d) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as are necessary.

(e) All new programs must comply with these regulations immediately upon approval. Any approved State section 402 permit program which requires revision to conform to this Part shall be so revised within one year of the date of promulgation of these regulations, unless a State must amend or enact a statute in order to make the required revision of State programs in which case the revision shall take place within two years, except that revision of State programs to implement the requirements of 40 CFR Part 403 (pretreatment) shall be accomplished as provided in 40 CFR 403.10. In addition, approved States shall submit, within 6 months, copies of their permit forms for EPA review and approval. Approved States shall also assure that permit applicants, other than POTWs, either (1) whose permits expire after November 30, 1980, or (2) whose permits expire before November 30, 1980 and who have not reapplied for a permit prior to April 30, 1980, submit, as part of their application, the information required under § 122.21 (d) and (h), as appropriate.

#### § 123.63 Criteria for withdrawal of State programs.

(a) The Administrator may withdraw program approval when a State program no longer complies with the requirements of this Part, and the State fails to take corrective action. Such circumstances include the following:

(1) Where the State's legal authority no longer meets the requirements of this Part, including:

- (i) Failure of the State to promulgate or enact new authorities when necessary; or
- (ii) Action by a State legislature or court striking down or limiting State authorities.

(2) Where the operation of the State program fails to comply with the requirements of this Part, including:

- (i) Failure to exercise control over activities required to be regulated under this Part, including failure to issue permits;
- (ii) Issuance of permits which do not conform to the requirements of this Part; or
- (iii) Failure to comply with the public participation requirements of this Part.

(3) Where the State's enforcement program fails to comply with the requirements of this Part, including:

- (i) Failure to act on violations of permits or other program requirements;
- (ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or
- (iii) Failure to inspect and monitor activities subject to regulation.

(4) Where the State program fails to comply with the terms of the Memorandum of Agreement required under § 123.24.

§ 123.64 Procedures for withdrawal of State programs.

(a) A state with a program approved under this Part may voluntarily transfer program responsibilities required by Federal law to EPA by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator 180 days notice of the proposed transfer and shall submit a plan for the orderly transfer of all relevant program information not in the possession of EPA (such as permits, permit files, compliance files, reports, permit applications) which are necessary for EPA to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator shall evaluate the State's transfer plan and shall identify any additional information needed by the Federal government for program administration and/or identify any other deficiencies in the plan.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of the transfer in the Federal Register and in enough of the largest newspapers in the State to provide Statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA and State mailing lists.

(b) The following procedures apply when the Administrator orders the commencement of proceedings to determine whether to withdraw approval of a State program.

(1) *Order.* The Administrator may order the commencement of withdrawal proceedings on his or her own initiative or in response to a petition from an interested person alleging failure of the State to comply with the requirements of this Part as set forth in § 123.63. The Administrator shall respond in writing to any petition to commence withdrawal proceedings. He may conduct an informal investigation of the allegations in the petition to determine whether cause exists to commence proceedings under this paragraph. The Administrator's order commencing proceedings under this paragraph shall fix a time and place for the commencement of the hearing and shall specify the allegations against the State which are to be considered at the hearing. Within 30 days the State shall admit or deny these allegations in a written answer. The party seeking withdrawal of the State's program shall have the burden of coming forward with the evidence in a hearing under this paragraph.

(2) *Definitions.* For purposes of this paragraph the definitions of "Act," "Administrative Law Judge," "Hearing Clerk," and "Presiding Officer" in 40 CFR 22.03 apply in addition to the following:

(i) "Party" means the petitioner, the State, the Agency, and any other person whose request to participate as a party is granted.

(ii) "Person" means the Agency, the State and any individual or organization having an interest in the subject matter of the proceeding.

(iii) "Petitioner" means any person whose petition for commencement of withdrawal proceedings has been granted

by the Administrator.

(3) *Procedures.* (i) The following provisions of 40 CFR Part 22 (Consolidated Rules of Practice) are applicable to proceedings under this paragraph:

- (A) § 22.02 -- (use of number/gender);
- (B) § 22.04(c) -- (authorities of Presiding Officer);
- (C) § 22.06 -- (filing/service of rulings and orders);
- (D) § 22.09 -- (examination of filed documents);
- (E) § 22.19(a), (b) and (c) -- (prehearing conference);
- (F) § 22.22 -- (evidence);
- (G) § 22.23 -- (objections/offers of proof);
- (H) § 22.25 -- (filing the transcript); and
- (I) § 22.26 -- (findings/conclusions).

(ii) The following provisions are also applicable:

- (A) Computation and extension of time.

(1) *Computation.* In computing any period of time prescribed or allowed in these rules of practice, except as otherwise provided, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays, and Federal legal holidays shall be included. When a stated time expires on a Saturday, Sunday, or legal holiday, the stated time period shall be extended to include the next business day.

(2) *Extensions of time.* The Administrator, Regional Administrator, or Presiding Officer, as appropriate, may grant an extension of time for the filing of any pleading, document, or motion (i) upon timely motion of a party to the proceeding, for good cause shown, and after consideration of prejudice to other parties, or (ii) upon his own motion. Such a motion by a party may only be made after notice to all other parties, unless the movant can show good cause why serving notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document or motion is due to be filed, unless the failure of a party to make timely motion for extension of time was the result of excusable neglect.

(3) The time for commencement of the hearing shall not be extended beyond the date set in the Administrator's order without approval of the Administrator.

- (B) Ex parte discussion of proceeding.

At no time after the issuance of the order commencing proceedings shall the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer, Presiding Officer, or any other person who is likely to advise these officials in the decision on the case, discuss ex parte the merits of the proceeding with any interested person outside the Agency, with any Agency staff member who performs a prosecutorial or investigative function in such proceeding or a factually related proceeding, or with any representative of such person. Any ex parte memorandum or other communication addressed to the Administrator, Regional Administrator, Judicial Officer, Regional Judicial Officer, or the Presiding Officer during the pendency of the proceeding and relating to the merits thereof, by or on behalf of any party shall be regarded as argument made in the proceeding and shall be served upon all other parties. The

other parties shall be given an opportunity to reply to such memorandum or communication.

(C) Intervention.

(1) *Motion.* A motion for leave to intervene in any proceeding conducted under these rules of practice must set forth the grounds for the proposed intervention, the position and interest of the movant and the likely impact that intervention will have on the expeditious progress of the proceeding. Any person already a party to the proceeding may file an answer to a motion to intervene, making specific reference to the factors set forth in the foregoing sentence and paragraph (b)(3)(ii)(C)(3) of this section, within ten (10) days after service of the motion for leave to intervene.

(2) However, motions to intervene must be filed within 15 days from the date the notice of the Administrator's order is first published.

(3) *Disposition.* Leave to intervene may be granted only if the movant demonstrates that (i) his presence in the proceeding would not unduly prolong or otherwise prejudice that adjudication of the rights of the original parties; (ii) the movant will be adversely affected by a final order; and (iii) the interests of the movant are not being adequately represented by the original parties. The intervenor shall become a full party to the proceeding upon the granting of leave to intervene.

(4) *Amicus curiae.* Persons not parties to the proceeding who wish to file briefs may so move. The motion shall identify the interest of the applicant and shall state the reasons why the proposed amicus brief is desirable. If the motion is granted, the Presiding Officer or Administrator shall issue an order setting the time for filing such brief. An amicus curiae is eligible to participate in any briefing after his motion is granted, and shall be served with all briefs, reply briefs, motions, and orders relating to issues to be briefed.

(D) Motions.

(1) *General.* All motions, except those made orally on the record during a hearing, shall (i) be in writing; (ii) state the grounds therefor with particularity; (iii) set forth the relief or order sought; and (iv) be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. Such motions shall be served as provided by (b)(4) of this section.

(2) *Response to motions.* A party's response to any written motion must be filed within ten (10) days after service of such motion, unless additional time is allowed for such response. The response shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. If no response is filed within the designated period, the parties may be deemed to have waived any objection to the granting of the motion. The Presiding Officer, Regional Administrator, or Administrator, as appropriate, may set a shorter time for response, or make such other orders concerning the disposition of motions as they deem appropriate.

(3) *Decision.* The Administrator shall rule on all motions filed or made after service of the recommended decision upon the parties. The Presiding Officer shall rule on all other motions. Oral argument on motions will be permitted where the Presiding Officer, Regional Administrator, or the Administrator considers it necessary or desirable.

(4) *Record of proceedings.* (i) The hearing shall be either stenographically reported verbatim or tape recorded, and thereupon transcribed by an official reporter designated by the Presiding Officer;

(ii) All orders issued by the Presiding Officer, transcripts of testimony, written statements of position, stipulations, exhibits, motions, briefs, and other written material of any kind submitted in the hearing shall be a part of the record and shall be available for inspection or copying in the Office of the Hearing Clerk, upon payment of costs. Inquiries may be made at the Office of the Administrative Law Judges, Hearing Clerk, 401 M Street, S.W., Washington, D.C. 20460;

(iii) Upon notice to all parties the Presiding Officer may authorize corrections to the transcript which involves

matters of substance;

(iv) An original and two (2) copies of all written submissions to the hearing shall be filed with the Hearing Clerk;

(v) A copy of each submission shall be served by the person making the submission upon the Presiding Officer and each party of record. Service under this paragraph shall take place by mail or personal delivery;

(vi) Every submission shall be accompanied by an acknowledgement of service by the person served or proof of service in the form of a statement of the date, time, and manner of service and the names of the persons served, certified by the person who made service, and;

(vii) The Hearing Clerk shall maintain and furnish to any person upon request, a list containing the name, service address, and telephone number of all parties and their attorneys or duly authorized representatives.

(5) *Participation by a person not a party.* A person who is not a party may, in the discretion of the Presiding Officer, be permitted to make a limited appearance by making oral or written statement of his/her position on the issues within such limits and on such conditions as may be fixed by the Presiding Officer, but he/she may not otherwise participate in the proceeding.

(6) *Rights of parties.* (i) All parties to the proceeding may:

(A) Appear by counsel or other representative in all hearing and pre-hearing proceedings;

(B) Agree to stipulations of facts which shall be made a part of the record.

(7) *Recommended decision.* (i) Within 30 days after the filing of proposed findings and conclusions, and reply briefs, the Presiding Officer shall evaluate the record before him/her, the proposed findings and conclusions and any briefs filed by the parties and shall prepare a recommended decision, and shall certify the entire record, including the recommended decision, to the Administrator.

(ii) Copies of the recommended decision shall be served upon all parties.

(iii) Within 20 days after the certification and filing of the record and recommended decision, all parties may file with the Administrator exceptions to the recommended decision and a supporting brief.

(8) *Decision by Administrator.* (i) Within 60 days after the certification of the record and filing of the Presiding Officer's recommended decision, the Administrator shall review the record before him and issue his own decision.

(ii) If the Administrator concludes that the State has administered the program in conformity with the appropriate Act and regulations his decision shall constitute "final agency action" within the meaning of 5 U.S.C. 704.

(iii) If the Administrator concludes that the State has not administered the program in conformity with the appropriate Act and regulations he shall list the deficiencies in the program and provide the State a reasonable time, not to exceed 90 days, to take such appropriate corrective action as the Administrator determines necessary.

(iv) Within the time prescribed by the Administrator the State shall take such appropriate corrective action as required by the Administrator and shall file with the Administrator and all parties a statement certified by the State Director that such appropriate corrective action has been taken.

(v) The Administrator may require a further showing in addition to the certified statement that corrective action has been taken.

(vi) If the State fails to take such appropriate corrective action and file a certified statement thereof within the time

prescribed by the Administrator, the Administrator shall issue a supplementary order withdrawing approval of the State program. If the State takes such appropriate corrective action, the Administrator shall issue a supplementary order stating that approval of authority is not withdrawn.

(vii) The Administrator's supplementary order shall constitute final Agency action within the meaning of 5 U.S.C. 704.

(viii) Withdrawal of authorization under this section and the appropriate Act does not relieve any person from complying with the requirements of State law, nor does it affect the validity of actions by the State prior to withdrawal.

Part 144 is added to read as follows:

#### PART 144 -- UNDERGROUND INJECTION CONTROL PROGRAM

##### Subpart A -- General Provisions

##### Sec.

144.1 Purpose and scope of Part 144.

144.2 Promulgation of Class II Programs for Indian lands.

144.3 Definitions.

144.4 Considerations under Federal law.

144.5 Confidentiality of information.

144.6 Classification of wells.

144.7 Identification of underground sources of drinking water and exempted aquifers.

144.8 Noncompliance and program reporting by the Director.

##### Subpart B -- General Program Requirements

144.11 Prohibition of unauthorized injection.

144.12 Prohibition of movement of fluid into underground sources of drinking water.

144.13 Elimination of certain class IV wells.

144.14 Requirements for wells injecting hazardous waste.

144.15 Assessment of Class V wells.

144.16 Waiver of requirement by Director.

Subpart C -- Authorization of Underground Injection by Rule  
Sec.

144.21 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells.

144.22 Existing Class II enhanced recovery and hydrocarbon storage wells.

144.23 Class IV wells.

144.24 Class V wells.

144.25 Requiring a permit.

144.26 Inventory requirements.

Subpart D -- Authorization by Permit

144.31 Authorization for a permit; authorization by permit.

144.32 Signatories to permit application and reports.

144.33 Area permits.

144.34 Emergency permits.

144.35 Effect of a permit.

144.36 Duration of permits.

144.37 Continuation of expiring permits.



144.38 Transfer of permits.

144.39 Modification or revocation and reissuance of permits.

144.40 Termination of permits.

144.41 Minor modifications of permits.

Subpart E -- Permit Conditions

144.51 Conditions applicable to all permits.

144.52 Establishing permit conditions.

144.53 Schedule of Compliance.

144.54 Requirements for recording and reporting of monitoring results.

144.55 Corrective action.

Authority: Pub. L. 93-523, as amended by Pub. L. 95-190, Pub. L. 96-63 and Pub. L. 96-502, 42 USC 300f *et seq.*

Subpart A -- General Provisions

§ 144.1 Purpose and scope of Part 144.

(a) *Contents of Part 144.* The regulations in this Part set forth requirements for the Underground Injection Control (UIC) Program promulgated under Part C of the Safe Drinking Water Act (SDWA) ( Pub. L. 95-523, as amended by Pub. L. 95-190, 42 U.S.C. 300f *et seq.*) and, to the extent that they deal with hazardous waste, the Resource Conservation and Recovery Act (RCRA) ( Pub. L. 94-580 as amended by Pub. L. 95-609, Pub. L. 96-510, 42 U.S.C. 6901 *et seq.*). They apply to EPA, and to approved States to the extent set forth in Part 145.

(b) *Authority.*

(1) Section 1421 of SDWA requires the Administrator to promulgate regulations establishing minimum requirements for effective UIC programs.

(2) Section 1422 of SDWA requires the Administrator to list in the Federal Register "each State for which in his judgment a State underground injection control program may be necessary to assure that underground injection will not endanger drinking water sources" and to establish by regulation a program for EPA administration of UIC programs in the absence of an approved State program in a listed State.

(3) Section 1423 of SDWA provides procedures for EPA enforcement of UIC requirements.

(4) Section 1431 authorizes the Administrator to take action to protect the health of persons when a contaminant which is present in or may enter a public water system may present an imminent and substantial endangerment to the health of persons.

(5) Section 1445 of SDWA authorizes the promulgation of regulations for such recordkeeping, reporting, and monitoring requirements "as the Administrator may reasonably require \* \* \* to assist him in establishing regulations under this title," and a "right of entry and inspection to determine compliance with this title, including for this purpose, inspection, at reasonable time, or records, files, papers, processes, controls, and facilities \* \* \*."

(6) Section 1450 of SDWA authorizes the Administrator "to prescribe such regulations as are necessary or appropriate to carry out his functions" under SDWA.

(c) *Overview of the UIC program.* An UIC program is necessary in any State listed by EPA under section 1422 of the SDWA. Because all States have been listed, the SDWA requires all States to submit an UIC program within 270 days after July 24, 1980, the effective date of 40 CFR Part 146, which was the final element of the UIC minimum requirements to be originally promulgated, unless the Administrator grants an extension, which can be for a period not to exceed an additional 270 days. If a State fails to submit an approvable program, EPA will establish a program for that State. Once a program is established, SDWA provides that all underground injections in listed States are unlawful and subject to penalties unless authorized by a permit or a rule. This Part sets forth the requirements governing all UIC programs, authorizations by permit or rule and prohibits certain types of injection. The technical regulations governing these authorizations appear in 40 CFR Part 146.

(d) *Structure of the UIC Program.*

(1) *Part 144.* This part sets forth the permitting and other program requirements that must be met by UIC Programs, whether run by a State or by EPA. It is divided into the following subparts:

(i) Subpart A describes general elements of the program, including definitions and classifications.

(ii) Subpart B sets forth the general program requirements, including the performance standards applicable to all injection activities, basic elements that all UIC programs must contain, and provisions for waiving permit of rule requirements under certain circumstances.

(iii) Subpart C sets forth requirements for wells authorized by rule.

(iv) Subpart D sets forth permitting procedures.

(v) Subpart E sets forth specific conditions, or types of conditions, that must at a minimum be included in all permits.

(2) *Part 145.* While Part 144 sets forth minimum requirements for all UIC Programs, these requirements are specifically identified as elements of a State application for primacy to administer an UIC Program in Part 145. Part 145 also sets forth the necessary elements of a State submission and the procedural requirements for approval of State programs.

(3) *Part 124.* The public participation requirements that must be met by UIC Programs, whether administered by the State or by EPA, are set forth in Part 124. EPA must comply with all Part 124 requirements; State administered programs must comply with Part 124 as required by Part 145. These requirements carry out the purposes of the public participation requirement of 40 CFR Part 25 (Public Participation), and supersede the requirements of that Part as they apply to the UIC Program.

(4) *Part 146.* This part set forth the technical criteria and standards that must be met in permits and authorizations

by rule as required by Part 144.

*(e) Scope of the Permit or Rule Requirement.*

The UIC Permit Program regulates underground injections by five classes of wells (see definition of "well injection," § 144.3). The five classes of wells are set forth in § 144.6. All owners or operators of these injection wells must be authorized either by permit or rule by the Director. In carrying out the mandate of the SDWA, this subpart provides that no injection shall be authorized by permit or rule if it results in the movement of fluid containing any contaminant into Underground Sources of Drinking Water (USDWs -- see § 144.3 for definition), if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may adversely affect the health of persons ( § 144.12). Existing Class IV wells which inject hazardous waste directly into an underground source of drinking water are to be eliminated over a period of six months and new such Class IV wells are to be prohibited ( § 144.13). Class V wells will be inventoried and assessed and regulatory action will be established at a later date.

In the meantime, if remedial action appears necessary, an individual permit may be required ( § 144.25) or the Director must require remedial action or closure by order ( § 144.12(c)). During UIC program development, the Director may identify aquifers and portions of aquifers which are actual or potential sources of drinking water. This will provide an aid to the Director in carrying out his or her duty to protect all USDWs. An aquifer is a USDW if it fits the definition, even if it has not been "identified." The Director may also designate "exempted aquifers" using criteria in § 146.04. Such aquifers are those which would otherwise qualify as "underground sources of drinking water" to be protected, but which have no real potential to be used as drinking water sources. Therefore, they are not USDWs. No aquifer is an "exempted aquifer" until it has been affirmatively designated under the procedures in § 144.7. Aquifers which do not fit the definition of "underground sources of drinking water" are not "exempted aquifers." They are simply not subject to the special protection afforded USDWs.

(1) *Specific inclusions.* The following wells are included among those types by injection activities which are covered by the UIC regulations. (This list is not intended to be exclusive but is for clarification only.)

- (i) Any injection well located on a drilling platform inside the State's territorial waters.
- (ii) Any dug hole or well that is deeper than its largest surface dimension, where the principal function of the hole is emplacement of fluids.
- (iii) Any septic tank or cesspool used by generators of hazardous waste, or by owners or operators of hazardous waste management facilities, to dispose of fluids containing hazardous waste.
- (iv) Any septic tank, cesspool, or other well used by a multiple dwelling, community, or Regional system for the injection of wastes.

(2) *Specific exclusions.* The following are not covered by these regulations:

- (i) Injection wells located on a drilling platform or other site that is beyond the State's territorial waters.
- (ii) Individual or single family residential waste disposal systems such as domestic cesspools or septic systems.
- (iii) Non-residential cesspools, septic systems or similar waste disposal systems if such systems (A) are used solely for the disposal of sanitary waste, and (B) have the capacity to serve fewer than 20 persons a day.
- (iv) Injection wells used for injection of hydrocarbons which are of pipeline quality and are gases at standard temperature and pressure for the purpose of storage.
- (v) Any dug hole which is not used for emplacement of fluids underground.

(3) The prohibition applicable to Class IV wells under § 144.13 does not apply to injections of hazardous wastes into aquifers or portions thereof which have been exempted pursuant to § 146.04.

§ 144.2 Promulgation of Class II Programs for Indian Lands.

Notwithstanding the requirements of this Part or Parts 124 and 146 of this chapter, the Administrator may promulgate an alternate UIC Program for Class II wells on any Indian reservation or Indian lands. In promulgating such a program the Administrator shall consider the following factors:

- (a) The interest and preferences of the tribal government having responsibility for the given reservation or Indian lands;
- (b) The consistency between the alternate program and any program in effect in an adjoining jurisdiction; and
- (c) Such other factors as are necessary and appropriate to carry out the Safe Drinking Water Act.

§ 144.3 Definitions.

Terms not defined in this section have the meaning given by the appropriate Act. When a defined term appears in a definition, the defined term is sometimes placed within quotation marks as an aid to readers.

*Administrator* means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

*Application* means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms; or forms approved by EPA for use in approved States, including any approved modifications or revisions.

*Appropriate Act and regulations* means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA); or Safe Drinking Water Act (SDWA), whichever is applicable; and applicable regulations promulgated under those statutes.

*Approved State Program* means a State UIC program administered by the State that has been approved by EPA according to SDWA § 1422.

*Aquifer* means a geological "formation," group of formations, or part of a formation that is capable of yielding a significant amount of water to a well or spring.

*Area of Review* means the area surrounding an injection well described according to the criteria set forth in § 146.06 or in the case of an area permit, the project area plus a circumscribing area the width of which is either 1/4 of a mile or a number calculated according to the criteria set forth in § 146.06.

*Contaminant* means any physical, chemical, biological, or radiological substance or matter in water.

*Director* means the Regional Administrator, the Administrator of EPA, or the State Director, as the context requires, or an authorized representative. When there is no approved State program, and there is an EPA administered program, "Director" means the Regional Administrator. When there is an approved State program, "Director" normally means the State Director.

In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State program. In such cases, the term "Director" means the Regional Administrator and not the State Director.

*Draft permit* means a document prepared under § 124.6 indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in § 124.5 are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in § 124.5 is not a "draft permit."

*Drilling mud* means a heavy suspension used in drilling an "injection well," introduced down the drill pipe and through the drill bit.

*Emergency permit* means a UIC "permit" issued in accordance with § 144.34.

*Environmental Protection Agency ("EPA")* means the United States Environmental Protection Agency.

*EPA* means the United States "Environmental Protection Agency."

*Exempted aquifer* means an "aquifer" or its portion that meets the criteria in the definition of "underground source of drinking water" but which has been exempted according to the procedures in § 144.7.

*Existing injection well* means an "injection well" other than a "new injection well."

*Facility or activity* means any UIC "injection well," or an other facility or activity that is subject to regulation under the UIC program.

*Fluid* means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

*Formation* means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth's surface or traceable in the subsurface.

*Formation fluid* means "fluid" present in a "formation" under natural conditions as opposed to introduced fluids, such as "drilling mud."

*Generator* means any person, by site location, whose act or process produces hazardous waste identified or listed in 40 CFR Part 261.

*Ground water* means water below the land surface in a zone of saturation.

*Hazardous waste* means a hazardous waste as defined in 40 CFR 261.3.

*Hazardous Waste Management facility ("HWM facility")* means all contiguous land, and structures, other appurtenances, and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

*HWM facility* means "Hazardous Waste Management facility"

*Injection well* means a "well" into which "fluids" are being injected.

*Injection zone* means a geological "formation" group of formations, or part of a formation receiving fluids through a "well."

*Interstate agency* means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to

the control of pollution as determined and approved by the administrator under the "appropriate Act and regulations."

*Major facility* means any UIC "facility or activity" classified as such by the Regional Administrator, or, in the case of approved State programs, the Regional Administrator in conjunction with the State Director.

*Manifest* means the shipping document originated and signed by the "generator" which contains the information required by Subpart B of 40 CFR Part 262.

*New injection wells* means an "injection well" which began injection after a UIC program for the State applicable to the well is approved or prescribed.

*Owner or operator* means the owner or operator of any "facility or activity" subject to regulation under the UIC program.

*Permit* means an authorization, license, or equivalent control document issued by EPA or an approved State to implement the requirements of this Part, Parts 145, 146 and 124. "Permit" includes an area permit ( § 144.33) and an emergency permit ( § 144.34). Permit does not include UIC authorization by rule ( § 144.21), or any permit which has not yet been the subject of final agency action, such as a "draft permit."

*Person* means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

*Plugging* means the act or process of stopping the flow of water, oil or gas into or out of a formation through a borehole or well penetrating that formation.

*Project* means a group of wells in a single operation.

*Radioactive Waste* means any waste which contains radioactive material in concentrations which exceed those listed in 10 CFR Part 20, Appendix B, Table II, Column 2.

RCRA means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976 ( Pub. L. 94-580, as amended by Pub. L. 95-609, Pub. L. 96-510, 42 U.S.C. 6901 et seq.).

*Regional Administrator* means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

*Schedule of compliance* means a schedule of remedial measures included in a "permit," including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the "appropriate Act and regulations."

*SDWA* means the Safe Drinking Water Act ( Pub. L. 93-523, as amended by Pub. L. 96-502; 42 U.S.C. 300f et seq.).

*Site* means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

*State* means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands and the Commonwealth Northern Mariana Islands.

*State Director* means the chief administrative officer of any State or interstate agency operating an approved program, or delegated representative of the State Director. If responsibility is divided among two or more State or interstate agencies, "State Director" means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

*State/EPA Agreement* means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs.

*Stratum* (plural strata) means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material.

*Total dissolved solids* means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR Part 136.

*UIC* means the Underground Injection Control program under Part C of the Safe Drinking Water Act, including an "approved State program."

*Underground injection* means a "well injection."

*Underground source of drinking water (USDW)* means an aquifer or its portion:

- (a)(1) Which supplies any public water system; or
- (2) Which contains a sufficient quantity of ground water to supply a public water system; and
  - (i) Currently supplies drinking water for human consumption; or
  - (ii) Contains fewer than 10,000 mg/l total dissolved solids; and
- (b) Which is not an exempted aquifer.

*USDW* means "underground source of drinking water."

*Well* means a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension.

*Well injection* means the subsurface emplacement of "fluids" through a bored, drilled, or driven "well;" or through a dug well, where the depth of the dug well is greater than the largest surface dimension.

#### § 144.4 Considerations under Federal law.

Permits shall be issued in a manner and shall contain conditions consistent with requirements of applicable Federal laws. These laws may include:

(a) *The Wild and Scenic Rivers Act*, 16 U.S.C. 1273 et seq. Section 7 of the Act prohibits the Regional Administrator from assisting by license or otherwise the construction of any water resources project that would have a direct, adverse effect on the values for which a national wild and scenic river was established.

(b) *The National Historic Preservation Act of 1966*, 16 U.S.C. 470 et seq. Section 106 of the Act and implementing regulations (36 CFR Part 800) require the Regional Administrator, before issuing a license, to adopt measures when feasible to mitigate potential adverse effects of the licensed activity and properties listed or eligible for listing in the National Register of Historic Places. The Act's requirements are to be implemented in cooperation with State Historic Preservation Officers and upon notice to, and when appropriate, in consultation with the Advisory Council on Historic Preservation.

(c) *The Endangered Species Act*, 16 U.S.C. 1531 et seq. Section 7 of the Act and implementing regulations (50 CFR Part 402) require the Regional Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or

threatened species or adversely affect its critical habitat.

(d) *The Coastal Zone Management Act*, 16 U.S.C. 1451 *et seq.* Section 307(c) of the Act and implementing regulations (15 CFR Part 930) prohibit EPA from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the proposed activity complies with the State Coastal Zone Management program, and the State or its designated agency concurs with the certification (or the Secretary of Commerce overrides the States nonconcurrence).

(e) *The Fish and Wildlife Coordination Act*, 16 U.S.C. 661 *et seq.*, requires the Regional Administrator, before issuing a permit proposing or authorizing the impoundment (with certain exemptions), diversion, or other control or modification of any body of water, consult with the appropriate State agency exercising jurisdiction over wildlife resources to conserve these resources.

(f) *Executive orders* [Reserved.]

#### § 144.5 Confidentiality of information.

(a) In accordance with 40 CFR Part 2, any information submitted to EPA pursuant to these regulations may be claimed as confidential by the submitter. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, EPA may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR Part 2 (Public Information).

(b) Claims of confidentiality for the following information will be denied:

- (1) The name and address of any permit applicant or permittee;
- (2) Information which deals with the existence, absence, or level of contaminants in drinking water.

#### § 144.6 Classification of wells.

Injection wells are classified as follows:

(a) *Class I*

(1) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one-quarter mile of the well bore, an underground source of drinking water.

(2) Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one quarter mile of the well bore, an underground source of drinking water.

(b) *Class II.* Wells which inject fluids:

(1) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

(2) For enhanced recovery of oil or natural gas; and

(3) For storage of hydrocarbons which are liquid at standard temperature and pressure.



(c) *Class III.* Wells which inject for extraction of minerals including:

(1) Mining of sulfur by the Frasch process;

(2) In situ production of uranium or other metals; this category includes only in-situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V.

(3) Solution mining of salts or potash.

(d) *Class IV*

(1) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within one-quarter ( 1/4 ) mile of the well contains an underground source of drinking water.

(2) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one-quarter ( 1/4 ) mile of the well contains an underground source of drinking water.

(3) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under paragraphs (a)(1) or (d) (1) and (2) of this section (e.g., wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to § 146.04).

(e) *Class V.* Injection wells not included in Classes I, II, III, or IV.

§ 144.7 Identification of underground sources of drinking water and exempted aquifers.

(a) The Director may identify (by narrative description, illustrations, maps, or other means) and shall protect, except where exempted under paragraph (b) of this section, as an underground source of drinking water, all aquifers or parts of aquifers which meet the definition of an "underground source of drinking water" in § 144.3. Even if an aquifer has not been specifically identified by the Director, it is an underground source of drinking water if it meets the definition in § 144.3.

(b)(1) the Director may identify (by narrative description, illustrations, maps, or other means) and describe in geographic and/or geometric terms (such as vertical and lateral limits and gradient) which are clear and definite, all aquifers or parts thereof which the Director proposes to designate as exempted aquifers using the criteria in 40 CFR 146.04.

(2) No designation of an exempted aquifer submitted as part of a UIC Program shall be final until approved by the Administrator as part of a UIC program.

(3) Subsequent to program approval or promulgation, the Director may, after notice and opportunity for a public hearing, identify additional exempted aquifers. For approved State programs exemption of aquifers identified (i) under § 146.04(b) shall be treated as a program revision under § 145.32; (ii) under § 146.04(c) shall become final if the State Director submits the exemption in writing to the Administrator and the Administrator has not disapproved the designation within 45 days. Any disapproval by the Administrator shall state the reasons and shall constitute final Agency action for purposes of judicial review.

(c)(1) For Class III wells, the Director shall require an applicant for a permit which necessitates an aquifer

exemption under § 146.04(b)(1) to furnish the data necessary to demonstrate that the aquifer is expected to be mineral or hydrocarbon producing. Information contained in the mining plan for the proposed project, such as a map and general description of the mining zone, general information on the mineralogy and geochemistry of the mining zone, analysis of the amenability of the mining zone to the proposed mining method, and a time-table of planned development of the mining zone shall be considered by the Director in addition to the information required by § 144.31(g).

(2) For Class II wells, a demonstration of commercial producibility shall be made as follows:

(i) For a Class II well to be used for enhanced oil recovery processes in a field or project containing aquifers from which hydrocarbons were previously produced, commercial producibility shall be presumed by the Director upon a demonstration by the applicant of historical production having occurred in the project area or field.

(ii) For Class II wells not located in a field or project containing aquifers from which hydrocarbons were previously produced, information such as logs, core data, formation description, formation depth, formation thickness and formation parameters such as permeability and porosity shall be considered by the Director, to the extent such information is available.

#### § 144.8 Noncompliance and program reporting by the Director.

The Director shall prepare quarterly and annual reports as detailed below. When the State is the permit-issuing authority, the State Director shall submit any reports required under this section to the Regional Administrator. When EPA is the permit-issuing authority, the Regional Administrator shall submit any report required under this section to EPA Headquarters.

(a) *Quarterly reports.* The Director shall submit quarterly narrative reports for major facilities as follows:

(1) *Format.* The report shall use the following format:

(i) Provide an alphabetized list of permittees. When two or more permittees have the same name, the lowest permit number shall be entered first.

(ii) For each entry on the list, include the following information in the following order:

(A) Name, location, and permit number of the noncomplying permittees.

(B) A brief description and date of each instance of noncompliance for that permittee. Instances of noncompliance may include one or more the kinds set forth in paragraph (a)(2) of this section. When a permittee has noncompliance of more than one kind, combine the information into a single entry for each such permittee.

(C) The date(s) and a brief description of the action(s) taken by the Director to ensure compliance.

(D) Status of the instance(s) of noncompliance with the date of the review of the status or the date of resolution.

(E) Any details which tend to explain or mitigate the instance(s) of noncompliance.

(2) *Instances of noncompliance to be reported.* Any instances of noncompliance within the following categories shall be reported in successive reports until the noncompliance is reported as resolved. Once noncompliance is reported as resolved it need not appear in subsequent reports.

(i) *Failure to complete construction elements.* When the permittee has failed to complete, by the date specified in the permit, an element of a compliance schedule involving either planning for construction or a construction step (for example, begin construction, attain operation level); and the permittee has not returned to compliance by accomplishing the required elements of the schedule within 30 days from the date a compliance schedule report is due under the

permit.

(ii) *Modifications to schedules of compliance.* When a schedule of compliance in the permit has been modified under §§ 144.39 or 144.41 because of the permittee's noncompliance.

(iii) *Failure to complete or provide compliance schedule or monitoring reports.* When the permittee has failed to complete or provide a report required in a permit compliance schedule (for example, progress report or notice of noncompliance or compliance) or a monitoring report; and the permittee has not submitted the complete report within 30 days from the date it is due under the permit for compliance schedules, or from the date specified in the permit for monitoring reports.

(iv) *Deficient reports.* When the required reports provided by the permittee are so deficient as to cause misunderstanding by the Director and thus impede the review of the status of compliance.

(v) *Noncompliance with other permit requirements.* Noncompliance shall be reported in the following circumstances:

(A) Whenever the permittee has violated a permit requirement (other than reported under paragraph (a)(2) (i) or (ii) of this section), and has not returned to compliance within 45 days from the date reporting of noncompliance was due under the permit; or

(B) When the Director determines that a pattern of noncompliance exists for a major facility permittee over the most recent four consecutive reporting periods. This pattern includes any violation of the same requirement in two consecutive reporting periods, and any violation of one or more requirements in each of four consecutive reporting periods; or

(C) When the Director determines significant permit noncompliance or other significant event has occurred, such as a migration of fluids into a USDW.

(vi) *All other.* Statistical information shall be reported quarterly on all other instances of noncompliance by major facilities with permit requirements not otherwise reported under paragraph (a) of this section.

(b) Annual reports. (1) *Annual noncompliance report.* Statistical reports shall be submitted by the Director on nonmajor UIC permittees indicating the total number reviewed, the number of noncomplying nonmajor permittees, the number of enforcement actions, and number of permit modifications extending compliance deadlines. The statistical information shall be organized to follow the types of noncompliance listed in paragraph (a) of this section.

(2) *For State-administered UIC Programs only.* In addition to the annual noncompliance report, the State Director shall:

(i) Submit each year a program report to the Administrator (in a manner and form prescribed by the Administrator) consisting of:

(A) A detailed description of the State's implementation of its program;

(B) Suggested changes, if any to the program description (see § 145.23(f)) which are necessary to reflect more accurately the State's progress in issuing permits;

(C) An updated inventory of active underground injection operations in the State.

(ii) In addition to complying with the requirements of paragraph (b)(2)(i) of this section, the Director shall provide the Administrator, on February 28th and August 31st of each of the first two years of program operation, the information required in 40 CFR 146.15, 146.25, and 146.35.

(c) *Schedule.* (1) For all quarterly reports. On the last working day of May, August, November, and February, the State Director shall submit to the Regional Administrator information concerning noncompliance with permit requirements by major facilities in the State in accordance with the following schedule. The Regional Administrator shall prepare and submit information for EPA-issued permits to EPA Headquarters in accordance with the same schedule.

Quarters Covered by Reports on Noncompliance by Major Facilities

[Date for completion of reports]

January, February, and March	n1 May 31
April, May, and June	n1 Aug. 31
July, August, and September	n1 Nov. 30
October, November, and December	n1 Feb. 28

n1 Reports must be made available to the public for inspection and copying on this date.

(2) *For all annual reports.* The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.

Subpart B -- General Program Requirements

§ 144.11 Prohibition of unauthorized injection.

Any underground injection, except as authorized by permit or rule issued under the UIC program, is prohibited. The construction of any well required to have a permit is prohibited until the permit has been issued.

§ 144.12 Prohibition of movement of fluid into underground sources of drinking water.

(a) No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary drinking water regulation under 40 CFR Part 142 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of this paragraph are met.

(b) For Class I, II, and III wells, if any water quality monitoring of an underground source of drinking water indicates the movement of any contaminant into the underground source of drinking water, except as authorized under Part 146, the Director shall prescribe such additional requirements for construction, corrective action, operation, monitoring, or reporting (including closure of the injection well) as are necessary to prevent such movement. In the case of wells authorized by permit, these additional requirements shall be imposed by modifying the permit in accordance with § 144.39, or the permit may be terminated under § 144.40 if cause exists, or appropriate enforcement action may be taken if the permit has been violated. In the case of wells authorized by rule, see §§ 144.21-.24.

(c) For Class V wells, if at any time the Director learns that a Class V well may cause a violation of primary drinking water regulations under 40 CFR Part 142, he or she shall:

- (1) Require the injector to obtain an individual permit;

(2) Order the injector to take such actions (including where required closure of the injection well) as may be necessary to prevent the violation; or

(3) Take enforcement action.

(d) Whenever the Director learns that a Class V well may be otherwise adversely affecting the health of persons, he or she may prescribe such actions as may be necessary to prevent the adverse effect, including any action authorized under paragraph (c) of this section.

(e) Notwithstanding any other provision of this section, the Director may take emergency action upon receipt of information that a contaminant which is present in or is likely to enter a public water system may present an imminent and substantial endangerment to the health of persons.

§ 144.13 Elimination of certain Class IV wells.

(a) In addition to the requirement of § 144.14, the following are prohibited:

(1) The construction of any Class IV well for the injection of hazardous waste directly into an underground source of drinking water;

(2) The injection of hazardous waste directly into an underground source of drinking water through a Class IV well that was not in operation prior to July 18, 1980.

(3) Any increase in the amount of hazardous waste or change in the type of hazardous waste injected into a well injecting hazardous waste directly into a USDW.

(4) The operation of any Class IV well injecting hazardous waste directly into a USDW after 6 months following the approval or promulgation of a UIC program for the State.

(b) The prohibition applicable to Class IV wells does not apply to injections of hazardous wastes into aquifers or portions thereof which have been exempted pursuant to § 146.04.

§ 144.14 Requirements for wells injecting hazardous waste.

(a) *Applicability.* The regulations in this section apply to all generators of hazardous waste, and to the owners or operators of all hazardous waste management facilities, using any class of well to inject hazardous wastes accompanied by a manifest. (See also § 144.13.)

(b) *Authorization.* The owner or operator of any well that is used to inject hazardous waste required to be accompanied by a manifest or delivery document shall apply for authorization to inject as specified in § 144.31 within 6 months after the approval or promulgation of the State UIC program.

(c) *Requirements.* In addition to complying with the applicable requirements of this Part and 40 CFR Part 146, the owner or operator of each facility meeting the requirements of paragraph (b) of this section, shall comply with the following:

(1) *Notification.* The owner or operator shall comply with the notification requirements of Section 3010 of Pub. L. 94-580.

(2) *Identification number.* The owner or operator shall comply with the requirements of 40 CFR 264.11.

(3) *Manifest system.* The owner or operator shall comply with the applicable recordkeeping and reporting requirements for manifested wastes in 40 CFR 264.71.

- (4) *Manifest discrepancies.* The owner or operator shall comply with 40 CFR § 264.72.
- (5) *Operating record.* The owner or operator shall comply with 40 CFR 264.73(a), (b)(1), and (b)(2).
- (6) *Annual report.* The owner or operator shall comply with 40 CFR § 264.75.
- (7) *Unmanifested waste report.* The owner or operator shall comply with 40 CFR § 264.75.
- (8) *Personnel training.* The owner or operator shall comply with the applicable personnel training requirements of 40 CFR § 264.16.
- (9) *Certification of closure.* When abandonment is completed, the owner or operator must submit to the Director certification by the owner or operator and certification by an independent registered professional engineer that the facility has been closed in accordance with the specifications in § 144.52(a)(6).

(d) *Additional requirements for Class IV wells.* [Reserved].

#### § 144.15 Assessment of Class V wells.

Assessment of Class V Wells. The Director shall, within three years of the approval of the program in a State submit a report and recommendations to EPA in compliance with § 146.52(b).

#### § 144.16 Waiver of requirement by Director.

(a) *When injection does not occur into, through or above an underground source of drinking water,* the Director may authorize a well or project with less stringent requirements for area of review, construction, mechanical integrity, operation, monitoring, and reporting than required in 40 CFR Part 146 or § 144.52 to the extent that the reduction in requirements will not result in an increased risk of movement of fluids into an underground source of drinking water.

(b) *When injection occurs through or above an underground source of drinking water, but the radius of endangering influence when computed under § 146.06(a) is smaller or equal to the radius of the well,* the Director may authorize a well or project with less stringent requirements for operation, monitoring, and reporting than required in 40 CFR Part 146 or § 144.52 to the extent that the reduction in requirements will not result in an increased risk of movement of fluids into an underground source of drinking water.

(c) *When reducing requirements under paragraph (a) or (b) of this section,* the Director shall prepare a fact sheet under § 124.8 explaining the reasons for the action.

#### Subpart C -- Authorization of Underground Injection by Rule

#### § 144.21 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells.

Injection into existing Class I, II (except existing enhanced recovery and hydrocarbon storage), and III wells is authorized.

(a) *Duration.* The authorization under this section expires:

- (1) Upon the effective date of the permit or permit denial, if a permit application has been filed in a timely manner as specified in § 144.31(c)(1);
- (2) If a permit application has not been filed in a timely manner as specified in § 144.31(c)(1); or
- (3) Five years after approval or promulgation of the UIC program unless a complete permit application is pending.

(b) *Class II and III wells in existing fields or projects.* Notwithstanding the prohibition in § 144.11, this section authorizes Class II and Class III wells or projects in existing fields or projects to continue normal operations until permitted, including construction, operation, and plugging and abandonment of wells as part of the operation, provided the owner or operator maintains compliance with all applicable requirements.

(c) *Requirements.* Owners or operators of wells authorized under this section shall comply with the following requirements no later than one year after authorization, except that where the referenced requirements apply to permittees, the terms "permit" and "permittee" shall be read to include rules and those authorized by rule:

(1) Section 144.51(a) -- (exemption from rule where authorized by temporary permits);

(2) Section 144.51(j)(2) -- (retention of records);

(3) 144.51(l)(6) -- (reporting within 24 hours);

(4) Section 144.51(n) -- (notice of abandonment);

(5) The owner or operator must prepare, maintain, and comply with a plan for plugging and abandonment that meets the requirements of § 146.10 and is acceptable to the Director (for purposes of this paragraph, temporary intermittent cessation of injection operations is not abandonment);

(6) The minimum operating, monitoring, and reporting requirements (except mechanical integrity) required to be specified by § 146.13 (Class I), § 146.23 (Class II) and § 146.33 (Class III);

(7) Section 144.52(a)(7) -- (financial responsibility); and

(8) Section 144.14(c) -- (requirements for wells injecting hazardous waste) applicable to Class I wells injecting hazardous waste only).

#### § 144.22 Existing Class II enhanced recovery and hydrocarbon storage wells.

Injection into existing Class II enhanced recovery and hydrocarbon storage wells is authorized for the life of the well or project.

(a) Owners or operators of wells authorized under this section shall comply with the following requirements, except that where the referenced requirements apply to permittees the terms "permit" and "permittee" shall be read to include rule and those authorized by rule:

(1) Section 144.51(a) -- (exemption from rule where authorized by temporary permit);

(2) Section 144.51(j)(2) -- (retention or records);

(3) Section 144.51(l)(6) -- (reporting within 24 hours);

(4) Section 144.52(n) -- (notice of abandonment);

(5) The owner or operator must prepare, maintain, and comply with a plan for plugging and abandonment that meets the requirements of § 146.10 and is acceptable to the Director (for purposes of this paragraph, temporary intermittent cessation of injection operations is not abandonment);

(6) Section 144.52(a)(7) -- (financial responsibility);

(7) Section 146.08 -- (mechanical integrity);

(8) Section 146.22 -- (casing and cementing requirements where appropriate); and

(9) The minimum operating, monitoring and reporting requirements required to be specified by § 146.23.

(b) Owners or operators of wells authorized under this section shall comply with the construction requirements no later than three years, and other requirements no later than one year after authorization.

§ 144.23 Class IV wells.

(a) Injection into existing Class IV wells as defined in § 144.6(d)(1) is authorized for up to six months after approval or promulgation of the UIC Program. Such wells are subject to the requirements of § 144.13 and § 144.14(c).

(b) Injection into existing Class IV wells as defined in § 144.6(d) (2) and (3) are authorized until six months after approval or promulgation of an UIC Program incorporating criteria and standards under Part 146, Subpart E applicable to Class IV injection wells. Such wells are subject to the requirements of § 144.14(c).

§ 144.24 Class V wells.

Injection into Class V wells is authorized until further requirements under future regulations become applicable.

§ 144.25 Requiring a permit.

(a) The Director may require any Class I, II, III, or V injection well authorized by a rule to apply for and obtain an individual or area UIC permit. Cases where individual or area UIC permits may be required include:

(1) The injection well is not in compliance with any requirement of the rule;

Note. -- Any underground injection which violates any authorization by rule is subject to appropriate enforcement action.

(2) The injection well is not or no longer is within the category of wells and types of well operations authorized in the rule;

(3) The protection of USDWs requires that the injection operation be regulated by requirements, such as for corrective action, monitoring and reporting, or operation, which are not contained in the rule.

(b) For EPA administered programs, the Director may require the owner or operator authorized by a rule to apply for an individual or area UIC permit under this paragraph only if the owner or operator has been notified in writing that a permit application is required. The notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that upon the effective date of the UIC permit the rule no longer applies to the activities regulated under the UIC Program.

(c) Any owner or operator authorized by a rule may request to be excluded from the coverage of the rules by applying for an individual or area UIC permit. The owner or operator shall submit an application under § 144.31 with reasons supporting the request, to the Director. The Director may grant any such requests.

§ 144.26 Inventory requirements.

Owners or operators of all injection wells authorized by rule shall submit inventory information to the Director. Any authorization under this subpart automatically terminates for any owner or operator who fails to comply within the time specified in paragraph (c) of this section.

(a) *Contents.* As part of the inventory, the Director shall require and the owner/operator shall provide at least the



following information:

- (1) Facility name and location;
- (2) Name and address of legal contact;
- (3) Ownership of facility;
- (4) Nature and type of injection wells; and
- (5) Operating status of injection wells.

Note. -- This information is requested on national form "Inventory of Injection Wells," OMB No. 158-R0170.

(b) *Notice.* Upon approval of the UIC Program in a State, the Director shall notify owners or operators of injection wells of their duty to submit inventory information. The method of notification selected by the Director must assure that the owners or operators will be made aware of the inventory requirement.

(c) *Deadlines.* Owners or operators of injection wells must submit inventory information no later than one year after the authorization by rule. The Director need not require inventory information from any facility with interim status under RCRA.

#### Subpart D -- Authorization by Permit

##### § 144.31 Application for a permit; authorization by permit

(a) *Permit application.* Except for owners or operators authorized by rule, all underground injections wells are prohibited unless authorized by permit. Persons currently authorized by rule must still apply for a permit under this section unless authorization was for the life of the well or project. Rules authorizing well injections for which permit applications have been submitted shall lapse for a particular well injection or project upon the effective date of the permit or permit denial for that well injection or project. Procedures for applications, issuance and administration of emergency permits are found exclusively in § 144.34.

(b) *Who applies?* When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

(c) *Time to apply.* Any person who performs or proposes an underground injection for which a permit is or will be required shall submit an application to the Director in accordance with the UIC program as follows:

(1) For existing wells, as expeditiously as practicable but no later than 4 years from the approval or promulgation of the UIC program, or as required under § 144.14(b) for wells injecting hazardous waste.

(2) For new injection wells, except new wells in projects authorized under § 144.21(b) or covered by an existing area permit under § 144.33(c), a reasonable time before construction is expected to begin.

(d) *Completeness.* The Director shall not issue a permit before receiving a complete application for a permit except for emergency permits. An application for a permit is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity. For EPA-administered programs, an application which is reviewed under § 124.3 is complete when the Director receives either a complete application or the information listed in a notice of deficiency.

(e) *Information requirements.* All applicants for permits shall provide the following information to the Director,

using the application form provided by the Director.

(1) The activities conducted by the applicant which require it to obtain permits under RCRA, UIC, the National Pollution Discharge Elimination system (NPDES) program under the Clean Water Act, or the Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(2) Name, mailing address, and location of the facility for which the application is submitted.

(3) Up to four SIC codes which best reflect the principal products or services provided by the facility.

(4) The operator's name, address, telephone number, ownership status, and status as Federal, State, private, public, or other entity.

(5) Whether the facility is located on Indian lands.

(6) A listing of all permits or construction approvals received or applied for under any of the following programs:

(i) Hazardous Waste Management program under RCRA.

(ii) UIC program under SDWA.

(iii) NPDES program under CWA.

(iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act.

(v) Nonattainment program under the Clean Air Act.

(vi) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act.

(vii) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act.

(viii) Dredge and fill permits under section 404 of CWA.

(ix) Other relevant environmental permits, including State permits.

(7) A topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, and other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within a quarter mile of the facility property boundary.

(8) A brief description of the nature of the business.

(f) *Recordkeeping.* Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under § 144.31 for a period of at least 3 years from the date the application is signed.

(g) Contents of UIC application. [Reserved.]

§ 144.32 Signatories to permit applications and reports.

(a) *Applications.* All permit applications, except those submitted for Class II wells (see paragraph (b) of this section), shall be signed as follows:

- (1) For a corporation: by a principal executive officer of at least the level of vice-president;
- (2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or
- (3) For a municipality, State, Federal, or other public agency: by either a principal executive or ranking elected official.

(b) *Reports.* All reports required by permits, other information requested by the Director, and all permit applications submitted for Class II wells under § 144.31 shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

- (1) The authorization is made in writing by a person described in paragraph (a) of this section;
- (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and
- (3) The written authorization is submitted to the Director.

(c) *Changes to authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

I certify under the penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

#### § 144.33 Area permits.

(a) The Director may issue a permit on an area basis, rather than for each well individually, provided that the permit is for injection wells:

(1) Described and identified by location in permit application(s) if they are existing wells, except that the Director may accept a single description of wells with substantially the same characteristics;

(2) Within the same well field, facility site, reservoir, project, or similar unit in the same State;

(3) Operated by a single owner or operator; and

(4) Used to inject other than hazardous waste.

(b) Area permits shall specify:

(1) The area within which underground injections are authorized, and

(2) The requirements for construction, monitoring, reporting, operation, and abandonment, for all wells authorized by the permit.

(c) The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:

(1) The permittee notifies the Director at such time as the permit requires;

(2) The additional well satisfies the criteria in paragraph (a) of this section and meets the requirements specified in the permit under paragraph (b) of this section; and

(3) The cumulative effects of drilling and operation of additional injection wells are considered by the Director during evaluation of the area permit application and are acceptable to the Director.

(d) If the Director determines that any well constructed pursuant to paragraph (c) of this section does not satisfy any of the requirements of paragraphs (c)(1) and (c)(2) of this section the Director may modify the permit under § 144.39, terminate under § 144.40, or take enforcement action. If the Director determines that cumulative effects are unacceptable, the permit may be modified under § 144.39.

#### § 144.34 Emergency permits.

(a) *Coverage.* Notwithstanding any other provision of this Part or Part 124, the Director may temporarily permit a specific underground injection which has not otherwise been authorized by rule or permit if:

(1) An imminent and substantial endangerment to the health of persons will result unless a temporary emergency permit is granted; or

(2) A substantial and irretrievable loss of oil or gas resources will occur unless a temporary emergency permit is granted to a Class II well; and

(i) Timely application for a permit could not practicably have been made; and

(ii) The injection will not result in the movement of fluids into underground sources of drinking water; or

(3) A substantial delay in production of oil or gas resources will occur unless a temporary emergency permit is granted to a new Class II well and the temporary authorization will not result in the movement of fluids into an underground source of drinking water.

#### (b) *Requirements for issuance.*

(1) Any temporary permit under paragraph (a)(1) of this section shall be for no longer term than required to prevent the hazard.

(2) Any temporary permit under paragraph (a)(2) of this section shall be for no longer than 90 days, except that if a permit application has been submitted prior to the expiration of the 90-day period, the Director may extend the temporary permit until final action on the application.

(3) Any temporary permit under paragraph (a)(3) of this section shall be issued only after a complete permit application has been submitted and shall be effective until final action on the application.

(4) Notice of any temporary permit under this paragraph shall be published in accordance with § 124.11 within 10 days of the issuance of the permit.

(5) The temporary permit under this section may be either oral or written. If oral, it must be followed within 5 calendar days by a written temporary emergency permit.

(6) The Director shall condition the temporary permit in any manner he or she determines is necessary to ensure that the injection will not result in the movement of fluids into an underground source of drinking water.

§ 144.35 Effect of a permit.

(a) Except for Class II and III wells, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Part C of the SDWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 144.39 and 144.40.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

§ 144.36 Duration of permits.

(a) Permits for Class I and Class V wells shall be effective for a fixed term not to exceed 10 years. UIC permits for Class II and III wells shall be issued for a period up to the operating life of the facility. The Director shall review each issued Class II or III well UIC permit at least once every 5 years to determine whether it should be modified, revoked and reissued, terminated, or a minor modification made as provided in §§ 144.39, 144.40, and 144.41.

(b) Except as provided in § 144.37, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Director may issue any permit for a duration that is less than the full allowable term under this section.

§ 144.37 Continuation of expiring permits.

(a) *EPA permits.* When EPA is the permit-issuing authority, the conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit if:

(1) The permittee has submitted a timely application which is a complete application for a new permit; and

(2) The Regional Administrator, through no fault of the permittee does not issue a new permit with an effective date on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(b) *Effect.* Permits continued under this section remain fully effective and enforceable.

(c) *Enforcement.* When the permittee is not in compliance with the conditions of the expiring or expired permit the Regional Administrator may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued permit or be subject to enforcement action for operating without a permit;

(3) Issue a new permit under Part 124 with appropriate conditions; or

(4) Take other actions authorized by these regulations.

(d) *State continuation.* An EPA issued permit does not continue in force beyond its time expiration date under Federal law if at that time a State is the permitting authority. A State authorized to administer the UIC program may

continue either EPA or State-issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit.

§ 144.38 Transfer of permits.

(a) *Transfers by modification.* Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 144.39(b)(2)), or a minor modification made (under § 144.41(d)), to identify the new permittee and incorporate such other requirements as may be necessary under the Safe Drinking Water Act.

(b) *Automatic transfers.* As an alternative to transfers under paragraph (a) of this section, any UIC permit for a well not injecting hazardous waste may be automatically transferred to a new permittee if:

(1) The current permittee notifies the Director at least 30 days in advance of the proposed transfer date referred to in paragraph (b)(2) of this section;

(2) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer or permit responsibility, coverage, and liability between them, and the notice demonstrates that the financial responsibility requirements of § 144.52(a)(7) will be met by the new permittee; and

(3) The Director does not notify the existing permittee and the proposed new permittee of his or her intent to modify or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under § 144.41. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

§ 144.39 Modification or revocation and reissuance of permits.

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 144.51 of this chapter), receives a request for modification or revocation and reissuance under § 124.5, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See § 124.5(c)(2) of this chapter. If cause does not exist under this section or § 144.41 of this chapter, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in § 144.41 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in Part 124 must be followed.

(a) *Causes for modification.* The following are causes for modification. For Class II or III wells the following may be causes for revocation and reissuance as well as modification; and for all other wells the following may be cause for revocation or reissuance as well as modification when the permittee requests or agrees.

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) *Information.* The Director has received information. Permits other than for Class II and III wells may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For UIC area permits ( § 144.33), this cause shall include any information indicating

that cumulative effects on the environment are unacceptable.

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits other than for Class II or III wells may be modified during their terms for this cause only as follows:

(i) For promulgation of amended standards or regulations, when:

(A) The permit condition requested to be modified was based on a promulgated Part 146 regulation; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based, and

(C) A permittee requests modification in accordance with § 124.5 within ninety (90) days after Federal Register notice of the action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations if the remand and stay concern that portion of the regulations on which the permit condition was based and a request is filed by the permittee in accordance with § 124.5 within ninety (90) days of judicial remand.

(4) *Compliance schedules.* The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. See also § 144.41(c) (minor modifications).

(b) *Causes for modification or revocation and reissuance.* The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under § 144.40, and the Director determines that modification or revocation and reissuance is appropriate.

(2) The Director has received notification (as required in the permit, see § 144.41(d)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer ( § 144.38(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(c) *Facility siting.* Suitability of the facility location will not be considered at the time of permit modification or revocation and reissuance unless new information or standards indicate that a threat to human health or the environment exists which was unknown at the time of permit issuance.

#### § 144.40 Termination of permits.

(a) The Director may terminate a permit during its term, or deny a permit renewal application for the following causes:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination;

(b) The Director shall follow the applicable procedures in Part 124 in terminating any permit under this section.

§ 144.41 Minor modifications of permits.

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part 124. Any permit modification not processed as a minor modification under this section must be made for cause and with Part 124 draft permit and public notice as required in § 144.39. Minor modifications may only:

- (a) Correct typographical errors;
- (b) Require more frequent monitoring or reporting by the permittee;
- (c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or
- (d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.
- (e) Change quantities or types of fluids injected which are within the capacity of the facility as permitted and, in the judgment of the Director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification.
- (f) Change construction requirements approved by the Director pursuant to § 144.52(a)(1) (establishing UIC permit conditions), provided that any such alteration shall comply with the requirements of this Part and Part 146.
- (g) Amend a plugging and abandonment plan which has been updated under § 144.52(a)(6).

Subpart E -- Permit Conditions

§ 144.51 Conditions applicable to all permits.

The following conditions apply to all UIC permits. All conditions applicable to all permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Safe Drinking Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application; except that the permittee need not comply with the provisions of this permit to the extent and for the duration such noncompliance is authorized in an emergency permit under § 144.34.

(b) *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) *Need to halt or reduce activity not a defense.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

(e) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities



and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(f) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(g) *Property rights.* This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) *Duty to provide information.* The permittee shall furnish to the Director, within a time specified, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(i) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the SDWA, any substances or parameters at any location.

(j) *Monitoring and records.*

(1) Samples and measurements taken for the purpose of monitoring activity.

(2) The permittee shall retain records of all monitoring information, including the following:

(i) Calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report, or application. This period may be extended by request of the Director at any time; and

(ii) The nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under § 144.52(a)(6). The Director may require the owner or operator to deliver the records to the Director at the conclusions of the retention period.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(k) *Signatory requirement.* All applications, reports, or information submitted to the Administrator shall be signed and certified. (See § 144.32).

(l) *Reporting requirements.*

(1) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

(2) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Safe Drinking Water Act. (See § 144.38; in some cases, modification or revocation and reissuance is mandatory).

(4) *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(5) *Compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 30 days following each schedule date.

(6) *Twenty-four hour reporting.* The permittee shall report any noncompliance which may endanger health or the environment, including:

(i) Any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW; or

(ii) Any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration into or between USDWs.

Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(7) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs (1) (4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (1)(6) of this section.

(8) *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

(m) *Requirements prior to commencing injection.* Except for all new wells authorized by an area permit under § 144.33(c), a new injection well may not commence injection until construction is complete, and

(1) The permittee has submitted notice of completion of construction to the Director; and

(2)(i) The Director has inspected or otherwise reviewed the new injection well and finds it is in compliance with the conditions of the permit; or

(ii) The permittee has not received notice from the Director of his or her intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in paragraph (m)(1) of this section, in which case prior inspection or review is waived and the permittee may commence injection. The Director shall include in his notice a reasonable time period in which he shall inspect the well.

(n) The permittee shall notify the Director at such times as the permit requires before conversion or abandonment of the well or in the case of area permits before closure of the project.

#### § 144.52 Establishing permit conditions.

(a) In addition to conditions required in § 144.51, the Director shall establish conditions, as required on a case-by-case basis under § 144.36, (duration of permits), § 144.53(a) (schedules of compliance), § 144.54 (monitoring), and for EPA permits only § 144.53(b) (alternate schedules of compliance) and § 144.4 (considerations under Federal law). In addition, each permit shall include conditions meeting the following requirements, when applicable.

(1) *Construction requirements* as set forth in Part 146. Existing wells shall achieve compliance with such requirements according to a compliance schedule established as a permit condition. The owner or operator of a proposed new injection well shall submit plans for testing, drilling, and construction as part of the permit application. Except as authorized by an area permit, no construction may commence until a permit has been issued containing construction requirements (see § 144.11). New wells shall be in compliance with these requirements prior to commencing injection operations. Changes in construction plans during construction may be approved by the Administrator as minor modifications ( § 144.41). No such changes may be physically incorporated into construction of the well prior to approval of the modification by the Director.

(2) *Corrective action* as set forth in § 144.55 and § 146.7

(3) *Operation requirements* as set forth in 40 CFR Part 146; the permit shall establish any maximum injection volumes and/or pressures necessary to assure that fractures are not initiated in the confining zone, that injected fluids do not migrate into any underground source of drinking water, that formation fluids are not displaced into any underground source of drinking water, and to assure compliance with the Part 146 operating requirements.

(4) *Requirements for wells managing hazardous waste*, as set forth in § 144.14.

(5) *Monitoring and reporting requirements* as set forth in 40 CFR Part 146. The permittee shall be required to identify types of tests and methods used to generate the monitoring data.

(6) *Plugging and abandonment.* Any Class I, II or III permit shall include, and any Class V permit may include, conditions to ensure that plugging and abandonment of the well will not allow the movement of fluids either into an underground source of drinking water or from one underground source of drinking water to another. Applicants for a UIC permit shall submit a plan for plugging and abandonment. Where the plan meets the requirements of this paragraph, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate, the Director shall require the applicant to revise the plan, prescribe conditions meeting the requirements of this paragraph, or deny the application. For purposes of this paragraph, temporary intermittent cessation of injection operations is not abandonment.

(7) *Financial responsibility.* The permittee is required to maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Director. The permittee must show evidence of financial responsibility to the Director by the submission of surety bond, or other adequate assurance, such as financial statements or other materials acceptable to the Director.

(8) *Mechanical integrity.* A permit for any Class I, II or III well or injection project which lacks mechanical integrity shall include, and for any Class V well may include, a condition prohibiting injection operations until the permittee shows to the satisfaction of the Director under § 146.08 that the well has mechanical integrity.

(9) *Additional conditions.* The Director shall impose on a case-by-case basis such additional conditions as are necessary to prevent the migration of fluids into underground sources of drinking water.

(b)(1) In addition to conditions required in all permits the Director shall establish conditions in permits as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the SDWA and Parts 144, 145, 146 and 124.

(2) For a State issued permit, an applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of the permit. For a permit issued by EPA, an applicable requirement is a statutory or regulatory requirement (including any interim final regulation) which takes effect prior to the issuance of the permit (except as provided in § 124.86(c) for UIC permits being processed under Subparts E or F of Part 124). Section 124.14 (reopening of comment period) provides a means for reopening EPA permit proceedings at the discretion of the Director where new requirements become effective during the permitting process and are of sufficient magnitude to make additional proceedings desirable. For State and EPA administered programs, an applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit, to the extent allowed in § 144.39.

(3) New or reissued permits, and to the extent allowed under § 144.39 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in § 144.52.

(c) *Incorporation.* All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

#### § 144.53 Schedule of compliance.

(a) *General.* The permit may, when appropriate, specify a schedule of compliance leading to compliance with the SDWA and Parts 144, 145, 146, and 124.

(1) *Time for compliance.* Any schedules of compliance shall require compliance as soon as possible, and in no case later than 3 years after the effective date of the permit.

(2) *Interim dates.* Except as provided in paragraph (b)(1)(ii) of this section, if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of any interim requirement is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) *Reporting.* The permit shall be written to require that if paragraph (a)(1) of this section is applicable, progress reports be submitted no later than 30 days following each interim date and the final date of compliance.

(b) *Alternative schedules of compliance.* A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows:

(1) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:

(i) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(ii) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

(2) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure timely compliance with applicable requirements.

(3) If the permittee is undecided whether to cease conducting regulated activities, the Director may issue or modify a permit to contain two schedules as follows:

(i) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(ii) One schedule shall lead to timely compliance with applicable requirements;

(iii) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(iv) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under paragraph (b)(3)(i) of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

(4) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the Director, such as a resolution of the board of directors of a corporation.

#### § 144.54 Requirements for recording and reporting of monitoring results.

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity and as specified in Part 146. Reporting shall be no less frequent than specified in the above regulations.

#### § 144.55 Corrective action.

(a) *Coverage.* Applicants for Class I, II, (other than existing), or III injection well permits shall identify the location of all known wells within the injection well's area of review which penetrate the injection zone, or in the case of Class II wells operating over the fracture pressure of the injection formation, all known wells within the area of review

penetrating formations affected by the increase in pressure. For such wells which are improperly sealed, completed, or abandoned, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid into underground sources of drinking water ("corrective action"). Where the plan is adequate, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate (based on the factors in § 146.07), the Director shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit under paragraph (b) of this section, or deny the application. The Director may disregard the provisions of § 146.06 (Area of Review) and § 146.07 (Corrective Action) when reviewing an application to permit an existing Class II well.

(b) *Requirements --*

(1) *Existing injection wells.* Any permit issued for an existing injection well (other than Class II) requiring corrective action shall include a compliance schedule requiring any corrective action accepted or prescribed under paragraph (a) of this section to be completed as soon as possible.

(2) *New injection wells.* No owner or operator of a new injection well may begin injection until all required corrective action has been taken.

(3) *Injection pressure limitation.* The Director may require as a permit condition that injection pressure be so limited that pressure in the injection zone does not exceed hydrostatic pressure at the site of any improperly completed or abandoned well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be part of a compliance schedule and last until all other required corrective action has been taken.

(4) *Class III Wells Only.* When setting corrective action requirements the Director shall consider the overall effect of the project on the hydraulic gradient in potentially affected USDWs, and the corresponding changes in potentiometric surface(s) and flow direction(s) rather than the discrete effect of each well. If a decision is made that corrective action is not necessary based on the determinations above, the monitoring program required in § 146.33(b) shall be designed to verify the validity of such determinations.

Part 145 is added to read as follows:

PART 145 -- STATE UIC PROGRAM REQUIREMENTS

Subpart A -- General Program Requirements

Sec.

145.1 Purpose and scope.

145.2 Definitions.

Subpart B -- Requirements for State Programs

145.11 Requirements for permitting.

145.12 Requirements for compliance evaluation programs.

145.13 Requirements for enforcement authority.

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Subpart C -- State Program Submissions

Sec.

145.21 General requirements for program approvals.

145.22 Elements of a program submission.

145.23 Program description.

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145.25 Memorandum of Agreement with the Regional Administrator.

Subpart D -- Program Approval, Revision and Withdrawal

145.31 Approval process.

145.32 Procedures for revision of State programs.

145.33 Criteria for withdrawal of State programs.

145.34 Procedures for withdrawal of State programs.

Authority: Pub. L. 93-523, as amended by Pub. L. 95-190, Pub. L. 96-63 and Pub. L. 96-502, 42 U.S.C. 300f *et seq.*

Subpart A -- General Program Requirements

§ 145.1 Purpose and scope.

(a) This part specifies the procedures EPA will follow in approving, revising, and withdrawing State programs under Section 1422 (underground injection control -- UIC) of SDWA, and includes the elements which must be part of submissions to EPA for program approval and the substantive provisions which must be present in State programs for them to be approved.

(b) State submissions for program approval must be made in accordance with the procedures set out in Subpart C. This includes developing and submitting to EPA a program description ( § 145.23), an Attorney General's Statement ( § 145.24), and a Memorandum of Agreement with the Regional Administrator ( § 145.25).

(c) The substantive provisions which must be included in State programs to obtain approval include requirements for permitting, compliance evaluation, enforcement, public participation, and sharing of information. The requirements are found in Subpart B. Many of the requirements for State programs are made applicable to States by cross-referencing other EPA regulations. In particular, many of the provisions of Parts 144 and 124 are made applicable to States by the references contained in § 145.11.

(d) Upon submission of a complete program, EPA will conduct a public hearing, if interest is shown, and determine whether to approve or disapprove the program taking into consideration the requirements of this Part, the Safe Drinking Water Act and any comments received.

(e) Upon approval of a State program, the Administrator shall suspend the issuance of Federal permits for those activities subject to the approved State program.

(f) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this Part.

(g) Nothing in this Part precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this Part;

(2) Operating a program with a greater scope of coverage than that required under this Part. Where an approved State program has a greater scope of coverage than required by Federal law the additional coverage is not part of the Federally approved program.

#### § 145.2 Definitions.

The definitions of Part 144 apply to all subparts of this Part.

#### Subpart B -- Requirements for State Programs

##### § 145.11 Requirements for permitting.

(a) All State programs under this Part must have legal authority to implement each of the following provisions and must be administered in conformance with each; except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements.

(1) § 144.5(b) -- (Confidential information);

(2) § 144.6 -- (Classification of injection wells);

(3) § 144.7 -- (Identification of underground sources of drinking water and exempted aquifers);

(4) § 144.8 -- (Noncompliance reporting);

(5) § 144.11 -- (Prohibition of unauthorized injection);

(6) § 144.12 -- (Prohibition of movement of fluids into underground sources of drinking water);

(7) § 144.13 -- (Elimination of Class IV wells);

(8) § 144.14 -- (Requirements for wells managing hazardous waste);

(9) § 144.21- § 144.26 -- (Authorization by rule);



- (10) § 144.31 -- (Application for a permit);
- (11) § 144.32 -- (Signatories);
- (12) § 144.33 -- (Area Permits);
- (13) § 144.34 -- (Emergency permits);
- (14) § 144.35 -- (Effect of permit);
- (15) § 144.36 -- (Duration);
- (16) § 144.38 -- (Permit transfer);
- (17) § 144.39 -- (Permit modification);
- (18) § 144.40 -- (Permit termination);
- (19) § 144.51 -- (Applicable permit conditions);
- (20) § 144.52 -- (Establishing permit conditions);
- (21) § 144.53(a) -- (Schedule of compliance);
- (22) § 144.54 -- (Monitoring requirements);
- (23) § 144.55 -- (Corrective Action);
- (24) § 124.3(a) -- (Application for a permit);
- (25) § 124.5 (a), (c), (d), and (f) -- (Modification of permits);
- (26) § 124.6 (a), (c), (d), and (e) -- (Draft Permit);
- (27) § 124.8 -- (Fact sheets);
- (28) § 124.10 (a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e) -- (Public notice);
- (29) § 124.11 -- (Public comments and requests for hearings);
- (30) § 124.12(a) -- (Public hearings); and
- (31) § 124.17 (a) and (c) -- (Response to comments).

(b)(1) States need not implement provisions identical to the provisions listed in paragraphs (a) (1)-(31) of this section. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. While States may impose more stringent requirements, they may not make one requirement more lenient as a tradeoff for making another requirement more stringent; for example, by requiring that public hearings be held prior to issuing any permit while reducing the amount of advance notice of such a hearing.

(2) State programs may, if they have adequate legal authority, implement any of the provisions of Parts 144 and 124. See, for example § 144.37(d) (continuation of permits) and § 124.4 (consolidation of permit processing).

§ 145.12 Requirements for compliance evaluation programs.

(a) State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports).

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall maintain:

(1) A program which is capable of making comprehensive surveys of all facilities and activities subject to the State Director's authority to identify persons subject to regulation who have failed to comply with permit application or other program requirements. Any compilation, index, or inventory of such facilities and activities shall be made available to the Regional Administrator upon request;

(2) A program for periodic inspections of the facilities and activities subject to regulation. These inspections shall be conducted in a manner designed to:

(i) Determine compliance or noncompliance with issued permit conditions and other program requirements;

(ii) Verify the accuracy of information submitted by permittees and other regulated persons in reporting forms and other forms supplying monitoring data; and

(iii) Verify the adequacy of sampling, monitoring, and other methods used by permittees and other regulated persons to develop that information;

(3) A program for investigating information obtained regarding violations of applicable program and permit requirements; and

(4) Procedures for receiving and ensuring proper consideration of information submitted by the public about violations. Public effort in reporting violations shall be encouraged and the State Director shall make available information on reporting procedures.

(c) The State Director and State officers engaged in compliance evaluation shall have authority to enter any site or premises subject to regulation or in which records relevant to program operation are kept in order to copy any records, inspect, monitor or otherwise investigate compliance with permit conditions and other program requirements. States whose law requires a search warrant before entry conform with this requirement.

(d) Investigatory inspections shall be conducted, samples shall be taken and other information shall be gathered in a manner [e.g., using proper "chain of custody" procedures] that will produce evidence admissible in an enforcement proceeding or in court.

#### § 145.13 Requirements for enforcement authority.

(a) Any State agency administering a program shall have available the following remedies for violations of State program requirements:

(1) To restrain immediately and effectively any person by order or by suit in State court from engaging in any unauthorized activity which is endangering or causing damage to public health or environment;

[Note. -- This paragraph requires that States have a mechanism (e.g., an administrative cease and desist order or the ability to seek a temporary restraining order) to stop any unauthorized activity endangering public health or the environment.]

(2) To sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program

requirement, including permit conditions, without the necessity of a prior revocation of the permit;

(3) To assess or sue to recover in court civil penalties and to seek criminal remedies, including fines, as follows:

(i) For all wells except Class II wells, civil penalties shall be recoverable for any program violation in at least the amount of \$2,500 per day. For Class II wells, civil penalties shall be recoverable for any program violation in at least the amount of \$1,000 per day.

(ii) Criminal fines shall be recoverable in at least the amount of \$5,000 per day against any person who willfully violates any program requirement, or for Class II wells, pipeline (production) severance shall be imposable against any person who willfully violates any program requirement.

[Note. -- In many States the State Director will be represented in State courts by the State Attorney General or other appropriate legal officer. Although the State Director need not appear in court actions he or she should have power to request that any of the above actions be brought.]

(b)(1) The maximum civil penalty or criminal fine (as provided in paragraph (a)(3) of this section) shall be assessable for each instance of violation and, if the violation is continuous, shall be assessable up to the maximum amount for each day of violation.

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the Safe Drinking Water Act.

[Note. -- For example, this requirement is not met if State law includes mental state as an element of proof for civil violations.]

(c) Any civil penalty assessed, sought, or agreed upon by the State Director under paragraph (a)(3) of this section shall be appropriate to the violation. A civil penalty agreed upon by the State Director in settlement of administrative or judicial litigation may be adjusted by a percentage which represents the likelihood of success in establishing the underlying violation(s) in such litigation. If civil penalty, together with the costs of expeditious compliance, would be so severely disproportionate to the resources of the violator as to jeopardize continuance in business, the payment of the penalty may be deferred or the penalty may be forgiven in whole or part, as circumstances warrant. In the case of a penalty for a failure to meet a statutory or final permit compliance deadline, "appropriate to the violation," as used in this paragraph, means a penalty which is equal to:

(1) An amount appropriate to redress the harm or risk to public health or the environment; plus

(2) An amount appropriate to remove the economic benefit gained or to be gained from delayed compliance; plus

(3) An amount appropriate as a penalty for the violator's degree of recalcitrance, defiance, or indifference to requirements of the law; plus

(4) An amount appropriate to recover unusual or extraordinary enforcement costs thrust upon the public; minus

(5) An amount, if any, appropriate to reflect any part of the noncompliance attributable to the government itself; and minus

(6) An amount appropriate to reflect any part of the noncompliance caused by factors completely beyond the violator's control (e.g., floods, fires).

[Note. -- In addition to the requirements of this paragraph, the State may have other enforcement remedies. The following enforcement options, while not mandatory, are highly recommended:

Procedures for assessment by the State of the costs of investigations, inspections, or monitoring surveys which lead to the establishment of violations;

Procedures which enable the State to assess or to sue any persons responsible for unauthorized activities for any expenses incurred by the State in removing, correcting, or terminating any adverse effects upon human health and the environment resulting from the unauthorized activity, or both; and

Procedures for the administrative assessment of penalties by the Director.]

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraph (a) (1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in § 145.12(b)(4);

(ii) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

#### § 145.14 Sharing of information.

(a) Any information obtained or used in the administration of a State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information under this section. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2. If EPA obtains from a State information that is not claimed to be confidential, EPA may make that information available to the public without further notice.

(b) EPA shall furnish to States with approved programs the information in its files not submitted under a claim of confidentiality which the State needs to implement its approved program. EPA shall furnish to States with approved programs information submitted to EPA under a claim of confidentiality, which the State needs to implement its approved program, subject to the conditions in 40 CFR Part 2.

#### Subpart C -- State Program Submissions

#### § 145.21 General requirements for program approvals.

(a) States shall submit to the Administrator a proposed State UIC program complying with § 145.22 of this Part within 270 days of the date of promulgation of the UIC regulations on June 24, 1980. The administrator may, for good cause, extend the date for submission of a proposed State UIC program for up to an additional 270 days.

(b) States shall submit to the Administrator 6 months after the date of promulgation of the UIC regulations a report describing the State's progress in developing a UIC program. If the Administrator extends the time for submission of a UIC program an additional 270 days, pursuant to § 145.21(a), the State shall submit a second report six months after the first report is due. The Administrator may prescribe the manner and form of the report.

(c) EPA will establish a UIC program in any State which does not comply with paragraph (a) of this section. EPA will continue to operate a UIC program in such a State until the State receives approval of a UIC program in accordance with the requirements of this Part.

[Note. -- States which are authorized to administer the NPDES permit program under Section 402 of CWA are encouraged to rely on existing statutory authority, to the extent possible, in developing a State UIC program. Section 402(b)(1)(D) of CWA requires that NPDES States have the authority "to issue permits which control the disposal of pollutants into wells." In many instances, therefore, NPDES States will have existing statutory authority to regulate well disposal which satisfies the requirements of the UIC program. Note, however, that CWA excludes certain types of well injections from the definition of "pollutant." If the State's statutory authority contains a similar exclusion it may need to be modified to qualify for UIC program approval.]

(d) If a State can demonstrate to EPA's satisfaction that there are no underground injections within the State for one or more classes of injection wells (other than Class IV wells) subject to SDWA and that such injections cannot legally occur in the State until the State has developed an approved program for those classes of injections, the State need not submit a program to regulate those injections and a partial program may be approved. The demonstration of legal prohibition shall be made by either explicitly banning new injections of the class not covered by the State program or providing a certification from the State Attorney General that such new injections cannot legally occur until the State has developed an approved program for that class. The State shall submit a program to regulate both those classes of injections for which a demonstration is not made and class IV wells.

(e) When a State UIC program is fully approved by EPA to regulate all classes of injections, the State assumes primary enforcement authority under Section 1422(b)(3) of SDWA. EPA retains primary enforcement responsibility whenever the State program is disapproved in whole or in part. States which have partially approved programs have authority to enforce any violation of the approved portion of their program. EPA retains authority to enforce violations of State underground injection control programs, except that, when a State has a fully approved program, EPA will not take enforcement actions without providing prior notice to the State and otherwise complying with Section 1423 of SDWA.

(f) A State can assume primary enforcement responsibility for the UIC program, notwithstanding § 145.21(3), when the State program is unable to regulate activities on Indian lands within the State. EPA will administer the program on Indian lands if the State does not seek this authority.

#### § 145.22 Elements of a program submission.

(a) Any State that seeks to administer a program under this Part shall submit to the Administrator at least three copies of a program submission. The submission shall contain the following:

- (1) A letter from the Governor of the State requesting program approval;
- (2) A complete program description, as required by § 145.23, describing how the State intends to carry out its responsibilities under this Part;
- (3) An Attorney General's statement as required by § 145.24;
- (4) A Memorandum of Agreement with the Regional Administrator as required by § 145.25;
- (5) Copies of all applicable State statutes and regulations, including those governing State administrative procedures;
- (6) The showing required by § 145.31(b) of the State's public participation activities prior to program submission.

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the statutory review period (i.e., the period of time allotted for formal EPA review of a proposed State program under the Safe Drinking Water Act) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the statutory review period shall not begin until all the necessary information is received by EPA.

(c) If the State's submission is materially changed during the statutory review period, the statutory review period shall begin again upon receipt of the revised submission.

(d) The State and EPA may extend the statutory review period by agreement.

#### § 145.23 Program description.

Any State that seeks to administer a program under this part shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under an interstate compact. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a "lead agency" to facilitate communications between EPA and the State agencies having program responsibility. When the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding.

(c) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(d) Copies of the permit form(s), application form(s), reporting form(s), and manifest format the State intends to employ in its program. Forms used by States need not be identical to the forms used by EPA but should require the same basic information. The State need not provide copies of uniform national forms it intends to use but should note its intention to use such forms.

[Note. -- States are encouraged to use uniform national forms established by the Administrator. If uniform national forms are used, they may be modified to include the State Agency's name, address, logo, and other similar information, as appropriate, in place of EPA's.]

(e) A complete description of the State's compliance tracking and enforcement program.

(f) A State UIC program description shall also include:

(1) A schedule for issuing permits within five years after program approval to all injection wells within the State which are required to have permits under this Part and Part 144;

(2) The priorities (according to criteria set forth in 40 CFR 146.09) for issuing permits, including the number of permits in each class of injection well which will be issued each year during the first five years of program operation;

(3) A description of how the Director will implement the mechanical integrity testing requirements of 40 CFR 146.08, including the frequency of testing that will be required and the number of tests that will be reviewed by the Director each year;

(4) A description of the procedure whereby the Director will notify owners and operators of injection wells of the requirement that they apply for and obtain a permit. The notification required by this paragraph shall require applications to be filed as soon as possible, but not later than four years after program approval for all injection wells requiring a permit;

(5) A description of any rule under which the Director proposes to authorize injections, including the text of the rule;

(6) For any existing enhanced recovery and hydrocarbon storage wells which the Director proposes to authorize by rule, a description of the procedure for reviewing the wells for compliance with applicable monitoring, reporting, construction, and financial responsibility requirements of §§ 144.51 and 144.52, and 40 CFR Part 146;

(7) A description of and schedule for the State's program to establish and maintain a current inventory of injection wells which must be permitted under State law;

(8) Where the Director had designated underground sources of drinking water in accordance with § 144.7(a), a description and identification of all such designated sources in the State;

(9) A description of aquifers, or parts thereof, which the Director has identified under § 144.7(b) as exempted aquifers, and a summary of supporting data;

(10) A description of and schedule for the State's program to ban Class IV wells prohibited under § 144.13; and

(11) A description of and schedule for the State's program to establish an inventory of Class V wells and to assess the need for a program to regulate Class V wells.

§ 145.24 Attorney General's statement.

(a) Any State that seeks to administer a program under this Part shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel) that the laws of the State, or an interstate compact, provide adequate authority to carry out the program described under § 145.23 and to meet the requirements of this Part. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program.

[Note. -- EPA will supply States with an Attorney General's statement format on request.]

(b) When a State seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

§ 145.25 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this Part shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this Part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). When existing permits are transferred from EPA to State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

[Note. -- For example, EPA and the State and the permittee could agree that the State would issue a permit(s) identical to the outstanding Federal permit which would simultaneously be terminated.]

(2) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection.

(3) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate.

(4) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(5) When appropriate, provisions for joint processing of permits by the State and EPA, for facilities or activities which require permits from both EPA and the State under different programs. See § 124.4.

(6) Provisions for modification of the Memorandum of Agreement in accordance with this Part.

(c) The Memorandum of Agreement, the annual program and grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this part. The State/EPA Agreement may not override the Memorandum of Agreement.

[Note. -- Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. However, it may still be appropriate to specify in the MOA the basis for such detailed agreements, e.g., a provision in the MOA



specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA agreement.]

Subpart D -- Program Approval, Revision and Withdrawal

§ 145.31 Approval process.

(a) Prior to submitting an application to the Administrator for approval of a State UIC program, the State shall issue public notice of its intent to adopt a UIC program and to seek program approval from EPA. This public notice shall:

(1) Be circulated in a manner calculated to attract the attention of interested persons. Circulation of the public notice shall include publication in enough of the largest newspapers in the State to attract Statewide attention and mailing to persons on appropriate State mailing lists and to any other persons whom the agency has reason to believe are interested;

(2) Indicate when and where the State's proposed program submission may be reviewed by the public;

(3) Indicate the cost of obtaining a copy of the submission;

(4) Provide for a comment period of not less than 30 days during which interested persons may comment on the proposed UIC program;

(5) Schedule a public hearing on the State program for no less than 30 days after notice of the hearing is published;

(6) Briefly outline the fundamental aspects of the State UIC program; and

(7) Identify a person that an interested member of the public may contact for further information.

(b) After complying with the requirements of paragraph (a) of this section any State may submit a proposed UIC program under section 1422 of SDWA and § 145.22 of this Part to EPA for approval. Such a submission shall include a showing of compliance with paragraph (a) of this section; copies of all written comments received by the State; a transcript, recording or summary of any public hearing which was held by the State; and a responsiveness summary which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received, and responds to these comments. A copy of the responsiveness summary shall be sent to those who testified at the hearing, and others upon request.

(c) After determining that a State's submission for UIC program approval is complete the Administrator shall issue public notice of the submission in the Federal Register and in accordance with paragraph (a)(1) of this section. Such notice shall:

(1) Indicate that a public hearing will be held by EPA no earlier than 30 days after notice of the hearing. The notice may require persons wishing to present testimony to file a request with the Regional Administrator, who may cancel the public hearing if sufficient public interest in a hearing is not expressed;

(2) Afford the public 30 days after the notice to comment on the State's submission; and

(3) Note the availability of the State submission for inspection and copying by the public.

(d) The Administrator shall approve State programs which conform to the applicable requirements of this Part.

(e) Within 90 days of the receipt of a complete submission (as provided in § 145.22) or material amendment thereto, the Administrator shall by rule either fully approve, disapprove, or approve in part the State's UIC program taking into account any comments submitted. The Administrator shall give notice of this rule in the Federal Register and in accordance with paragraph (a)(1) of this section. If the Administrator determines not to approve the State

program or to approve it only in part, the notice shall include a concise statement of the reasons for this determination. A responsiveness summary shall be prepared by the Regional Office which identifies the public participation activities conducted, describes the matters presented to the public, summarizes significant comments received, and explains the Agency's response to these comments. The responsiveness summary shall be sent to those who testified at the public hearing, and to others upon request.

§ 145.32 Procedures for revision of State programs.

(a) Either EPA or the approved State may initiate program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The state shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances.

(2) Whenever EPA determines that the proposed program revision is substantial, EPA shall issue public notice and provide an opportunity to comment for a period of at least 30 days. The public notice shall be mailed to interested persons and shall be published in the Federal Register and in enough of the largest newspapers in the State to provide Statewide coverage. The public notice shall summarize the proposed revisions and provide for the opportunity to request a public hearing. Such a hearing will be held if there is significant public interest based on requests received.

(3) The Administrator shall approve or disapprove program revisions based on the requirements of this Part and of the Safe Drinking Water Act.

(4) A program revision shall become effective upon the approval of the Administrator. Notice of approval of any substantial revision shall be published in the Federal Register. Notice of approval of non-substantial program revisions may be given by a letter from the Administrator to the State Governor or his designee.

(c) States with approved programs shall notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approval by the Administrator under paragraph (b) of this section. Organizational charts required under § 145.23(b) shall be revised and resubmitted.

(d) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as are necessary.

(e) The State shall submit the information required under paragraph (b)(1) of this section within 270 days of any amendment to this Part or 40 CFR Parts 144, 146, or 124 which revises or adds any requirement respecting an approved UIC program.

§ 145.33 Criteria for withdrawal of State programs.

(a) The Administrator may withdraw program approval when a State program no longer complies with the requirements of this Part, and the State fails to take corrective action. Such circumstances include the following:

(1) When the State's legal authority no longer meets their requirements of this Part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; or

- (ii) Action by a State legislature or court striking down or limiting State authorities.
- (2) When the operation of the State program fails to comply with the requirements of this Part, including:
  - (i) Failure to exercise control over activities required to be regulated under this Part, including failure to issue permits;
  - (ii) Repeated issuance of permits which do not conform to the requirements of this Part; or
  - (iii) Failure to comply with the public participation requirements of this Part.
- (3) When the State's enforcement program fails to comply with the requirements of this Part, including:
  - (i) Failure to act on violations of permits or other program requirements;
  - (ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or
  - (iii) Failure to inspect and monitor activities subject to regulation.
- (4) When the State program fails to comply with the terms of the Memorandum of Agreement required under § 145.24.

§ 145.34 Procedures for withdrawal of State programs.

(a) A State with a program approved under this Part may voluntarily transfer program responsibilities required by Federal law to EPA by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator 180 days notice of the proposed transfer and shall submit a plan for the orderly transfer of all relevant program information not in the possession of EPA (such as permits, permit files, compliance files, reports, permit applications) which are necessary for EPA to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator shall evaluate the State's transfer plan and shall identify any additional information needed by the Federal government for program administration and/or identify any other deficiencies in the plan.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of the transfer in the Federal Register and in enough of the largest newspapers in the State to provide Statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA and State mailing lists.

(b) Approval of a State UIC program may be withdrawn and a Federal program established in its place when the Administrator determines, after holding a public hearing, that the State program is not in compliance with the requirements of SDWA and this Part.

(1) *Notice to State of Public Hearing.* If the Administrator has cause to believe that a State is not administering or enforcing its authorized program in compliance with the requirements of SDWA and this Part, he or she shall inform the State by registered mail of the specific areas of alleged noncompliance. If the State demonstrates to the Administrator within 30 days of such notification that the State program is in compliance, the Administrator shall take no further action toward withdrawal and shall so notify the State by registered mail.

(2) *Public Hearing.* If the State has not demonstrated its compliance to the satisfaction of the Administrator within 30 days after notification, the Administrator shall inform the State Director and schedule a public hearing to discuss

withdrawal of the State program. Notice of such public hearing shall be published in the Federal Register and in enough of the largest newspapers in the State to attract statewide attention, and mailed to persons on appropriate State and EPA mailing lists. This hearing shall be convened not less than 60 days nor more than 75 days following the publication of the notice of the hearing. Notice of the hearing shall identify the Administrator's concerns. All interested persons shall be given opportunity to make written or oral presentation on the State's program at the public hearing.

(3) *Notice to State of Findings.* When the Administrator finds after the public hearing that the State is not in compliance, he or she shall notify the State by registered mail of the specific deficiencies in the State program and of necessary remedial actions. Within 90 days of receipt of the above letter, the State shall either carry out the required remedial action or the Administrator shall withdraw program approval. If the State carries out the remedial action or, as a result of the hearing is found to be in compliance, the Administrator shall so notify the State by registered mail and conclude the withdrawal proceedings.

Part 233 is added as follows:

## PART 233 -- 404 STATE PROGRAM TRANSFER REGULATIONS

### Subpart A -- General

#### Sec.

#### 233.1 Purpose and scope of Part 233.

#### Subpart B -- Definitions and General Program Requirements

#### 233.2 Purpose and scope of Subpart B.

#### 233.3 Definitions.

#### 233.4 Application for a permit.

#### 233.5 Continuation of expiring permits.

#### 233.6 Signatories to permit applications and reports.

#### 233.7 Conditions applicable to all permits.

#### 233.8 Establishing permit conditions.

#### 233.9 Duration of permits.

#### 233.10 Schedules of compliance.

233.11 Requirements for recording and reporting of monitoring results.

233.12 Effect of a permit.

233.13 Transfer of permits.

233.14 Modification or revocation and reissuance of permits.

233.15 Termination of permits.

233.16 Minor modifications of permits.

233.17 Noncompliance and program reporting by the Director.

233.18 Confidentiality of information.

Subpart C -- State Program Requirements

233.20 Purpose and scope.

233.21 Elements of a program submission.

233.22 Program description.

233.23 Attorney General's statement.

233.24 Memorandum of Agreement with the Regional Administrator.

233.25 Memorandum of Agreement with the Secretary.

233.26 Requirements for permitting.

233.27 Requirements for compliance evaluation programs.

233.28 Requirements for enforcement authority.

233.29 Sharing of information.

233.30 Coordination with other programs.

233.31 Approval process.

233.32 Procedures for revision of State programs.

233.33 Criteria for withdrawal of State programs.

233.34 Procedures for withdrawal of State programs.

233.35 Activities not requiring permits.

233.36 Prohibitions.

233.37 General permits.

233.38 Emergency permits.

233.39 Transmission of information to EPA and other Federal agencies.

233.40 EPA review of and objections to State permits.

233.41 Coordination requirements.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Subpart A -- General

§ 233.1 Purpose and scope of Part 233.

(a) *Coverage.* Part 233 includes provisions for the *Dredge or Fill* (404) Program under section 404 of the *Clean Water Act*. This Part includes the requirements which must be met for a State to administer its own program in lieu of the U.S. Army Corps of Engineers in "State regulated waters," and provisions for EPA oversight of State issued 404 permits.

(b) *Structure.* These permit regulations are organized as follows:

(1) *Subpart A.* This Subpart contains general information relating to these regulations.

(2) *Subpart B.* This Subpart contains definitions for the 404 program, and some basic permitting requirements applicable to state programs.

(3) *Subpart C.* This Subpart establishes minimum program requirements for an approvable state program and for administering the permit program subsequent to approval, including EPA oversight.

(4) *Part 124.* Part 233 incorporates by reference certain procedures for issuance of State 404 permits which are established in Part 124 of this chapter.

(c) *Relation to other requirements.* (1) Applicants for State issued permits must use State-prescribed forms which must require at a minimum the information listed in these sections. All minimum information requirements for State 404 permit applications appear in § 233.4.

(2) *Technical regulations.* The 404 permit program covered in these regulations has separate additional regulations, located at 40 CFR Part 230, that contain technical requirements. These separate regulations are used by permit-issuing authorities to determine what requirements must be placed in permits if they are issued.

(d) *Public participation.* This rule establishes the requirements for public participation in State permit issuance and enforcement proceedings, and in the approval of State 404 programs. These requirements carry out the purposes of the public participation requirements of 40 CFR Part 25 (Public Participation), and supersede the requirements of that Part as they apply to actions covered under this Part.

(e) *State authorities.* Nothing in Part 233 precludes more stringent State regulation of any activity covered by these regulations, whether or not under an approved State program.

(f) *Federal 404 Program.* Permit program requirements for the Federal 404 program administered by the Corps of Engineers appear in 33 CFR Parts 320-330, rather than in this Part.

#### Subpart B -- Definitions and General Program Requirements

##### § 233.2 Purpose and scope of Subpart B.

Subpart B contains definitions for State 404 programs ( § 233.3) and basic permit requirements for state programs ( §§ 233.4 through 233.18).

##### § 233.3 Definitions.

The following definitions apply to Part 233. Terms not defined in this section have the meaning given by the CWA. When a defined term appears in a definition, the defined term is sometimes placed within quotation marks as an aid to readers.

*Administrator* means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

*Application* means the forms approved by EPA for use in "approved States," including any approved modifications or revisions.

*Approved program* or *approved State* means a State or interstate program which has been approved or authorized by EPA under Subpart C.

*Best management practices* ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the United States," including methods, measures, practices, or design and performance standards, which facilitate compliance with section

404(b)(1) environmental guidelines (40 CFR Part 230), effluent limitations or prohibitions under section 307(a), and applicable water quality standards.

*BMPs* means "best management practices."

*CWA* means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended by Pub. L. 95-217 and Pub. L. 95-576, 33 U.S.C. 1251 *et seq.*

*Director* means the chief administrative officer of any state or interstate agency operating an "approved program," or the delegated representative of the State Director. If responsibility is divided among two or more State or interstate agencies, "State Director" means the chief administrative officer of the State or interstate agency authorized to perform the particular procedure or function to which reference is made.

*Discharge of dredged material* means any addition from any "point source" of "dredged material" into "waters of the United States." The term includes the addition of dredged material into waters of the United States and the runoff or overflow from a contained land or water dredge material disposal area. Discharges of pollutants into waters of the United States resulting from the subsequent onshore processing of dredged material are not included within this term and are subject to the NPDES program even though the extraction and deposit of such material may also require a permit from the Corps of Engineers or the State section 404 program.

*Discharge of fill material* means the addition from any "point source" of "fill material" into "waters of the United States." The term includes the following activities in waters of the United States: placement of fill that is necessary for the construction of any structure; the building of any structure or impoundment requiring rock, sand, dirt, or other materials for its construction; site-development fill for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and artificial reefs.

*Disposal site* means that portion of the "waters of the United States" enclosed within fixed boundaries consisting of a bottom surface area and any overlaying volume of water. In the case of "wetlands" on which water is not present, the disposal site consists of the wetland surface area. Fixed boundaries may consist of fixed geographic point(s) and associated dimensions, or of a discharge point and specific associated dimensions.

*Draft permit* means a document prepared under § 124.6 of this Chapter indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in § 124.5 of this chapter, are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in § 124.5, is not a "draft permit." A "proposed permit" is not a "draft permit."

*Dredged material* means material that is excavated or dredged from "waters of the United States."

*Effluents* means "dredged material" or "fill material," including return flow from confined sites.

*Emergency permit* means a State 404 "permit" issued in accordance with § 233.38.

*Environmental Protection Agency* ("EPA") means the United States Environmental Protection Agency.

*EPA* means the United States "Environmental Protection Agency."

*Facility or activity* means any State 404 dredge or fill activity, or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the 404 program.



*Fill material* means any "pollutant" which replaces portions of the "waters of the United States" with dry land or which changes the bottom elevation of a water body for any purpose.

*General permit* means 404 "permit" issued under § 233.37 authorizing a category of discharges under the CWA within a geographical area.

*Interstate agency* means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the CWA.

*Major facility* means any 404 "facility or activity" classified as such by the Regional Administrator in conjunction with the State Director.

*Owner or operator* means the owner or operator of any "facility or activity" subject to regulation under the 404 program.

*Permit* means an authorization, license, or equivalent control document issued by an "approved State" to implement the requirements of this Part and Part 124. "Permit" includes 404 "general permit" ( § 233.37), and 404 "emergency permit" ( § 233.38).

*Person* means an individual, association, partnership, corporation, municipality, State or Federal agency, or an agent or employee thereof.

*Point source* means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

*Pollutant* means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive material (except those regulated under the Atomic Energy Act of 1954, as amended ( 42 U.S.C. § 2011 *et seq.* )), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(a) Sewage from vessels; or

(b) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that injection or disposal will not result in the degradation of ground or surface water resource.

[Note. -- Radioactive materials covered by the Atomic Energy Act are those encompassed in its definition of source, byproduct, or special nuclear produced isotopes. See *Train v. Colorado Public Interest Research Group Inc.* 426 U.S. 1 (1976)]

*Regional Administrator* means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

*Schedule of compliance* means a schedule of remedial measures included in a "permit", including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the CWA and its regulations.

*Secretary* means the Secretary of the Army, acting through the Chief of Engineers.

*Section 404 program* or *State 404 program* or *404* means an "approved State program" to regulate the "discharge of dredged material" and the "discharge of fill material" under section 404 of the Clean Water Act in "State regulated waters."

*Site* means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

*State* means any of the 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

*State/EPA Agreement* means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs including those under the CWA.

*State regulated waters* means those "waters of the United States" in which the Corps of Engineers suspends the issuance of section 404 permits upon approval of a State's section 404 permit program by the Administrator under section 404(h). These waters shall be identified in the program description as required by § 233.22(h)(1). The Secretary shall retain jurisdiction over the following waters (see CWA section 404(g)(1)):

- (a) Waters which are subject to the ebb and flow of the tide;
- (b) Waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark; and
- (c) "Wetlands" adjacent to waters in paragraphs (a) and (b) of this definition.

*Toxic pollutant* means any pollutant listed as toxic under section 307(a)(1) of CWA.

*Waters of the United States* or *waters of the U.S.* means:

- (a) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
- (b) All interstate waters, including interstate "wetlands;"
- (c) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, "wetlands," sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
  - (1) Which are or could be used by interstate or foreign travelers for recreational or other purposes;
  - (2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
  - (3) Which are used or could be used for industrial purposes by industries in interstate commerce;

*Wetlands* means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

#### § 233.4 Application for a permit.

(a) *Publicity and preapplication consultation.* The State director shall maintain a program to inform, to the extent possible, potential applicants for permits of the requirements of the State program and of the steps required to obtain permits for activities in State regulated waters. The State Director is encouraged to include preapplication consultation

as part of this program to assist applicants in understanding the requirements of the environmental guidelines issued under section 404(b)(1) of CWA (40 CFR Part 230) and in fulfilling permit application requirements.

(b) *Application for permit.* Except when an activity is authorized by a general permit under § 233.37 or is exempt from the requirement to obtain a permit under § 233.35, any person who proposes to discharge dredged or fill material into State regulated waters shall complete, sign and submit an application to the State Director. State application forms are subject to EPA review and approval. Procedures for applications, issuance and administration of emergency permits are found exclusively in § 233.38.

(c) *Who applies?* When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

(d) *Completeness.* The Director shall not issue a 404 permit before receiving a complete application for a permit except for 404 general permits or emergency permits. An application for a permit under a program is complete when the Director receives an application form and any supplemental information which are completed to his or her satisfaction. The completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.

(e) *Content of Application.* A complete application shall include the following information:

(1) A complete description of the proposed activity including:

(i) Name, address, and phone number of the applicant; and the names, addresses, and phone numbers of owners of properties adjacent to the site; and if appropriate, the location and dimensions of adjacent structures;

(ii) A description of the source of the dredged or fill material and method of dredging used, if any; a description of the type, composition and quantity of the material; the proposed method of transportation and disposal of the material, including the type of equipment to be used; and the extent (in acres) of the area of waters of the United States to be filled or used for disposal;

(iii) The purpose and intended use of the proposed activity (including whether it is water-dependent); a description of the use of any structures to be erected on the fill; and a schedule for the proposed activity;

(iv) A list of the approvals required by other Federal, interstate, State and local agencies for the activity, including all approvals or denials received; and

(v) A vicinity map identifying the proposed disposal site and the local jurisdiction closest to the disposal site.

(2) Information about the disposal site needed to evaluate compliance with 40 CFR Part 230, including the following:

(i) A description of known alternatives to the proposed discharge, including alternative disposal sites, construction methods, methods of discharge, and reasons for rejecting the alternatives;

(ii) A description of special aquatic sites, public use areas, wildlife refuges, and public water supply intakes in the affected or adjacent areas that may require special protection or preservation;

(iii) Plants, fish, shellfish and wildlife in the disposal site which may be dependent on water quality and quantity;

(iv) Uses of the disposal site which might affect human health and welfare; and

(v) A description of technologies or management practices by which the applicant proposes to minimize adverse environmental effects of the discharge. Guidelines for minimizing the adverse effects of discharges of dredged or fill

material are found in 40 CFR Part 230.

[Note. -- The State shall provide permit applicants with guidance, either through the application form or on an individual basis, regarding the level of detail of information and documentation required under this paragraph. The level of detail shall be reasonably commensurate with the type and size of discharge, proximity to critical areas, likelihood of presence of long-lived toxic chemical substances, and degree of environmental degradation.]

(3) One original set of drawings and maps, or one set of drawings and maps of reproducible quality, including:

(i) A map showing the following in plan view:

(A) Location of the activity site including latitude, longitude, and river mile, if known;

(B) Name of waterway;

(C) All applicable political (*e.g.*, county, borough, town, city, etc.) boundary lines;

(D) Names of all major roads in the vicinity of the site including the road providing the closest practicable access to the sites;

(E) North arrow,

(F) Arrows showing flow and circulation patterns;

(G) Existing shorelines or ordinary high watermark;

(H) Location of known wetlands;

(I) Water depths and bottom configuration around the project;

(J) Delineation of disposal site;

(K) Size-relationship between the proposed disposal site and affected waters (*e.g.*, a 1/4 acre fill in a 15-acre wetland);

(L) Location of previously used dredged material disposal sites with remaining capacity in the vicinity of the projects. The map must indicate retention levees, weirs, and any other devices for retaining dredged or fill material; and

(M) Location of structures, if any, in waters of the United States immediately adjacent to the proposed activity, including permit numbers, if known. Identify purposes of all structures.

(ii) A cross-sectional view of the proposed project showing the following:

(A) Water elevations;

(B) Water depths at waterward face of proposed work, or if dredging is proposed, showing dredging grade;

(C) Cross-section of fill;

(D) Elevation of spoil areas;

(E) Location of wetlands; and

(F) Delineation of disposal site.

(iii) Notes on all maps or drawings submitted, including:

(A) A list of names of adjacent property owners whose property also adjoins the water and who are not shown in the plan view;

(B) A title block for each sheet submitted identifying the proposed activity and containing the name of the body of water; river mile, if applicable; name of county, State and nearest incorporated municipality; name of applicant; number of the sheet and the total number of sheets in set; and date the drawing was prepared.

(C) Graphic or numerical scale.

(f) *Recordkeeping.* Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under § 233.28 for a period of at least 3 years from the date the application is signed.

#### § 233.5 Continuation of expiring permits.

A Corps of Engineers issued permit does not continue in force beyond its expiration date under Federal law if at that time a State is the permitting authority. States authorized to administer the 404 program may continue either Corps of Engineers or State issued permits until the effective date of the new permits, if State law allows. Otherwise, the facility or activity is operating without a permit from the time of expiration of the old permit to the effective date of the State-issued new permit.

#### § 233.6 Signatories to permit applications and reports.

(a) *Applications.* All permit applications shall be signed as follows:

(1) *For a corporation:* by a principal executive officer of at least the level of vice-president;

(2) *For a partnership or sole proprietorship:* by a general partner or the proprietor, respectively; or

(3) *For a municipality, State, Federal, or other public agency:* by either a principal executive officer or ranking elected official.

(b) *Reports.* All reports required by permits and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, or position of equivalent responsibility. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.); and

(3) The written authorization is submitted to the Director.

(c) *Changes to authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under paragraphs (a) or (b) of this section shall make the

following certification:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

§ 233.7 Conditions applicable to all permits.

The following conditions apply to all 404 permits. All such conditions shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

(a) *Duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(b) *Duty to reapply.* If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

(c) *Duty to halt or reduce activity.* It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) *Duty to mitigate.* The permittee shall take all reasonable steps to minimize or correct any adverse impact on the environment resulting from noncompliance with this permit.

(e) *Proper operation and maintenance.* The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems *only* when necessary to achieve compliance with the conditions of the permit.

(f) *Permit actions.* This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit conditions.

(g) *Property rights.* This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) *Duty to provide information.* The permittee shall furnish to the Director within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

(i) *Inspection and entry.* The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the CWA any substances or parameters at any location.

(j) *Monitoring and records.* (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(2) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.

(3) Records of monitoring information shall include:

(i) The date, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(k) *Signatory requirement.* All applications, reports, or information submitted to the Director shall be signed and certified. (See § 233.4.)

(l) *Reporting requirements.*

(1) *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.

(2) *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Act. (See § 233.13; in some cases, modification or revocation and reissuance is mandatory.)

(4) *Monitoring reports.* Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(5) *Compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) *Twenty-four hour reporting.* The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of

the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(7) *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under paragraphs (1) (1), (4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (1)(6) of this section.

(8) *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

(m) The permittee need not comply with the conditions of this permit to the extent and for the duration that such noncompliance is authorized in an emergency permit. (See § 233.38.)

(n) Activities are not conducted under the authority of this permit if they are not specifically identified and authorized in this permit.

(o) The permittee shall maintain the authorized work areas in good condition and in accordance with the requirements contained in this permit.

(p) If any applicable water quality standards are revised or modified, or if a toxic effluent standard or prohibition under CWA section 307(a) is established for a pollutant present in the permittee's discharge and is more stringent than any limitation in the permit, the permit shall be promptly modified to conform to the standard, limitation or prohibition.

#### § 233.8 Establishing permit conditions.

(a) In addition to conditions required in all permits ( § 233.7), the Director shall establish conditions in permits, as required on a case-by-case basis, under § 233.9 (duration of permits), 233.10(a) (schedules of compliance), and 233.11 (monitoring).

(b)(1) In addition the Director shall establish conditions in permits, as required on a case-by-case basis, to provide for and assure compliance with all applicable requirements of the CWA and appropriate regulations.

(2) An applicable requirement is a State statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit, or prior to the modification or revocation and reissuance of a permit, to the extent allowed in § 233.14.

(3) New or reissued permits, and to the extent allowed under § 233.14 modified or revoked and reissued permits, shall incorporate each of the applicable requirements referenced in § 233.8.

(c) Each permit shall include conditions meeting the following requirements, when applicable;

(1) *Identification.* A specific identification and description of the authorized activity, including:

(i) The name and address of the permittee and the permit application identification number;

(ii) The use or purpose of the discharge;

(iii) The type and quantity of the materials to be discharged;



(iv) Any structures proposed to be erected on fill material; and

(v) The location and boundaries of the discharge site(s), including a detailed sketch and the name and description of affected State regulated waters.

(2) *Environmental guidelines.* Provisions ensuring that the discharge will be conducted in compliance with the environmental guidelines issued under section 404(b)(1) of CWA (40 CFR Part 230), including conditions to ensure that the discharge will be conducted in a manner which minimizes adverse impacts upon the physical, chemical, and biological integrity of the waters of the United States, such as requirements for restoration or mitigation.

(3) *Water quality standards.* Any requirements necessary to comply with water quality standards established under applicable Federal or State law. If an applicable water quality standard is promulgated after the permit is issued, it shall be modified as provided in § 233.7(p).

(4) *Toxic effluent guidelines or prohibitions.* Requirements necessary to comply with any applicable toxic effluent standard or prohibition under section 307(a) of CWA or applicable State or local law. If an applicable toxic effluent standard or prohibition is promulgated after the permit is issued, it shall be modified as provided in § 233.7(p).

(5) *Best Management Practices.* Applicable BMPs approved by a Statewide CWA section 208(b)(4) agency as provided in the agreement described in § 233.41(a)(1).

(6) *General permits.* Any conditions necessary for general permits as required under § 233.37.

(7) *Commencement of work.* A specific date on which the permit shall automatically expire, unless previously revoked and reissued or modified or continued, if the authorized work has not been commenced.

(d) *Incorporation.* All permit conditions shall be incorporated either expressly or by reference. If incorporated by reference, a specific citation to the applicable regulations or requirements must be given in the permit.

#### § 233.9 Duration of permits.

(a) Section 404 permits shall be effective for a fixed term not to exceed 5 years.

(b) Except as provided in § 233.5, the term of a permit shall not be extended by modification beyond the maximum duration specified in this section.

(c) The Director may issue any permit for a duration that is less than the full allowable term under this section.

#### § 233.10 Schedules of compliance.

(a) *General.* The permit may, when appropriate, specify a schedule of compliance leading to compliance with the CWA and appropriate regulations.

(1) *Time for compliance.* Any schedules of compliance under this section shall require compliance as soon as possible.

(2) *Interim dates.* Except as provided in paragraph (b)(1)(ii) of this section, if a permit establishes a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(i) The time between interim dates shall not exceed 1 year.

(ii) If the time necessary for completion of any interim requirement (such as the construction of a control facility) is

more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) *Reporting.* The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Director in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if paragraph (a)(1)(ii) of this section is applicable.

#### § 233.11 Requirements for recording and reporting of monitoring results.

All permits shall specify:

(a) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods (including biological monitoring methods when appropriate);

(b) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(c) Applicable reporting requirements based upon the impact of the regulated activity.

#### § 233.12 Effect of a permit.

(a) Compliance with a permit during its term constitutes compliance, for purpose of enforcement, with sections 301, 307, and 403 of CWA. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in §§ 233.14 and 233.15.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

#### § 233.13 Transfer of permits.

*Transfer by modification.* A permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued (under § 233.14(b)(2) or a minor modification made (under § 233.16(d)) to identify the new permittee and incorporate such other requirements as may be necessary under the Act.

#### § 233.14 Modification or revocation and reissuance of permits.

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see § 233.7), receives a request for modification or revocation and reissuance under § 124.5 of this chapter, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of paragraph (c) of this section, and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See § 124.5(c)(2). If cause does not exist under this section or § 233.16, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in § 233.16 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared (if required under § 233.39(b)(1)), and procedures of an approved State program followed.

(a) *Causes for modification.* The following are causes for modification but not revocation and reissuance of permits. The following may be causes for revocation and reissuance as well as modification when the permittee requests or agrees.

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) *Information.* The Director has received information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For 404 general permits ( § 233.37) this cause shall include any information indicating that cumulative effects on the environment are unacceptable.

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows: (i) For promulgation of amended standards or regulations, when:

(A) The permit condition requested to be modified was based on an EPA approved or promulgated water quality standard; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation on which the permit condition was based, or has approved a State action with regard to a water quality standard on which the permit condition was based; and

(C) A permittee requests modification in accordance with § 124.5 within ninety (90) days after Federal Register notice of the action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated standards if the remand and stay concern that portion of the standards on which the permit condition was based and a request is filed by the permittee in accordance with § 124.5 within ninety (90) days of judicial remand.

(4) *Compliance schedules.* The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or material shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) The Director shall modify a permit to reflect toxic effluent standards or prohibitions or water quality standards, under the "reopener" condition of § 233.7(d).

(b) *Causes for modification or revocation and reissuance.* The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under § 233.15, and the Director determines that modification or revocation and reissuance is appropriate.

(2) The Director has received notification (as required in the permit, see § 233.7(l)(3)) of a proposed transfer of the permit.

#### § 233.15 Termination of permits.

The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(a) Noncompliance by the permittee with any condition of the permit;

(b) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time; or

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination.

(d) Permits may be modified or terminated when there is a change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (for example, plant closure).

#### § 233.16 Minor modifications of permits.

Upon the consent of the permittee, the Director may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures of Part 124 of this Chapter. Any permit modification not processed as a minor modification under this section must be made for cause and with Part 124 draft permit and public notice as required in § 233.14(a). Minor modifications may only:

(a) Correct typographical errors;

(b) Require more frequent monitoring or reporting by the permittee;

(c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement; or

(d) Allow for a change in ownership or operational control of a facility where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Director.

(e) Extend the term of a State section 404 permit, so long as the modification does not extend the term of the permit beyond 5 years from its original effective date.

#### § 233.17 Noncompliance and program reporting by the Director.

The Director shall prepare quarterly and annual reports as detailed below and shall submit them to the Regional Administrator.

(a) *Quarterly reports for State 404 programs.* The Director shall submit noncompliance reports for section 404 discharges specified under § 233.24(f)(1)(i)(A)-(E) containing the following information:

(1) Name, location, and permit number of each noncomplying permittee;

(2) A brief description and date of each instance of noncompliance, which should include the following:

(i) Any unauthorized discharges of dredged or fill material subject to the State's jurisdiction or any noncompliance with permit conditions; and

(ii) A description of investigations conducted and of any enforcement actions taken or contemplated.

(b) *Annual report for State 404 programs.* The State Director shall submit to the Regional Administrator an annual report assessing the cumulative impacts of the State's permit program on the integrity of State regulated waters. This report shall include:

(1) The number and nature of individual permits issued by the State during the year. This should include the locations and types of water bodies where permitted activities are sited (for example, wetlands, rivers, lakes, and other categories which the Director and Regional Administrator may establish);

(2) The number of acres of each of the categories of waters in paragraph (b)(1) of this section which were filled or which received any discharge of dredge material during the year (either by authorized or unauthorized activities);

(3) The number and nature of permit applications denied; and permits modified, revoked and reissued, or terminated during the year;

(4) The number and nature of permits issued under emergency conditions, as provided in § 233.38;

(5) The approximate number of persons in the State discharging dredged or fill material under general permits and an estimate of the cumulative impacts of these activities.

(c) *Schedule.* (1) For all quarterly reports. On the last working day of May, August, November, and February, the State Director shall submit to the Regional Administrator information concerning noncompliance with State 404 permit requirements by major dischargers or other dischargers with the following schedule.

Quarters covered by reports on noncompliance by major dischargers

[Date for completion of reports]

January, February, and March	May 31. n1
April, May, and June	August 31. n1
July, August, and September	November 30. n1
October, November, and December	February 28. n1

n1 Reports must be made available to the public for inspection and copying on this date.

(2) *For all annual reports.* The period for annual reports shall be for the calendar year ending December 31, with reports completed and available to the public no more than 60 days later.

§ 233.18 Confidentiality of information.

Claims of confidentiality for the following information will be denied:

- (a) The name and address of any permit applicant or permittee;
- (b) Permit applications and permits; and
- (c) Effluent data.

Subpart C -- State Program Requirements

§ 233.20 Purpose and scope.

(a) This subpart specifies the procedures EPA will follow in approving, revising, and withdrawing State programs under Section 404 of the CWA, and the requirements State programs must meet to be approved by the Administrator under Section 404.

(b) State submissions for program approval must be made in accordance with the procedures set out in this Subpart. This includes developing and submitting to EPA a program description ( § 233.22), an Attorney General's statement ( §

233.23), a Memorandum of Agreement with the Regional Administrator ( § 233.24), and with the Secretary ( § 233.25).

(c) The substantive provisions which must be included in State programs for them to be approved, including requirements for permitting, compliance evaluation, enforcement, public participation, and sharing of information, are found in this Part and in § 233.26.

(d) Upon submission of a complete program, EPA will conduct a public hearing, if interest is shown, and determine whether to approve or disapprove the program, taking into consideration the requirements of this Part, the CWA and any comments received.

(e) The Administrator shall approve State programs which conform to the applicable requirements of this Part.

(f) Upon approval of a State program, the Secretary shall suspend the issuance of Federal permits for those activities subject to the approved State program.

(g) Any State program approved by the Administrator shall at all times be conducted in accordance with the requirements of this Part.

(h) States are encouraged to consolidate their permitting activities. These regulations do not require consolidation.

(i) Partial State programs are not allowed under 404. Except as provided in § 233.35, the State program must regulate all discharges of dredged or fill material into State regulated waters. State section 404 programs are limited under section 404(g)(1) of CWA to coverage of such State regulated waters. See the definition of "State regulated waters" in § 233.3. However, in many cases States will lack authority to regulate activities on Indian lands. This lack of authority does not impair a State's ability to obtain full program approval in accordance with this Part, i.e., inability of a State to regulate activities on Indian lands does not constitute a partial program. The Secretary will administer the program on Indian lands if the State does not seek this authority.

[Note. -- States are advised to contact the United States Department of the Interior, Bureau of Indian Affairs, concerning authority over Indian lands.]

(j) Nothing in this Part precludes a State from:

(1) Adopting or enforcing requirements which are more stringent or more extensive than those required under this Part;

(2) Operating a program with a greater scope of coverage than that required under this Part. Where an approved State program has greater scope of coverage than required by federal law the additional coverage is not part of the Federally approved program.

[Note. -- State assumption of the Section 404 program is limited to certain waters, as provided in paragraph (j) of this section. The federal program operated by the Corps of Engineers continues to apply to the remaining waters in the State even after program approval. However, this does not restrict States from regulating discharges of dredged or fill materials into those waters over which the Secretary retains section 404 jurisdiction.]

#### § 233.21 Elements of a program submission.

(a) Any State that seeks to administer a program under this Part shall submit to the Administrator at least three copies of a program submission. The submission shall contain the following:

(1) A letter from the Governor of the State requesting program approval;

(2) A complete program description, as required by § 233.22, describing how the State intends to carry out its

responsibilities under this Part;

(3) An Attorney General's statement as required by § 233.23;

(4) A Memorandum of Agreement with the Regional Administrator as required by § 233.24, and a Memorandum of Agreement with the Secretary as required by § 233.25;

(5) Copies of all applicable State statutes and regulations, including those governing State administrative procedures;

(b) Within 30 days of receipt by EPA of a State program submission, EPA will notify the State whether its submission is complete. If EPA finds that a State's submission is complete, the statutory review period (i.e., the period of time allotted for formal EPA review of a proposed State program under the CWA) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the statutory review period shall not begin until all the necessary information is received by EPA.

(c) If the State's submission is materially changed during the statutory review period, the statutory review period shall begin again upon receipt of the revised submission.

(d) The State and EPA may extend the statutory review period by agreement.

#### § 233.22 Program description.

Any State that seeks to administer a 404 program shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under an interstate compact. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency may be designated as a "lead agency" to facilitate communications between EPA and the State agencies having program responsibility. Where the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(2) An itemization of the estimated costs of establishing and administering the program for the first two years after approval, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director for the first two years after approval to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding.

(c) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(d) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program. State section 404 application forms must include the information required by § 233.4 and State section 404 permit forms must include the information conditions required by § 233.7.

(e) A complete description of the State's compliance tracking and enforcement program.

(f) A description of State regulated waters.

[Note. -- States should obtain from the Secretary an identification of those waters of the U.S. within the State over which the Corps of Engineers retains authority under section 404(g) of CWA.]

(g) A categorization, by type and quantity, of discharges within the State, and an estimate of the number of discharges within each category for which the discharger must file for a permit.

(h) An estimate of the number and percent of activities within each category for which the State has already issued a State permit regulating the discharge.

(i) In accordance with § 233.35(a)(6), a description of the specific best management practices requirements proposed to be used to satisfy the exemption provisions of section 404(f)(1)(E) of CWA for construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment.

(j) A description of how the State section 404 agency(ies) will interact with other State and local agencies.

(k) A description of how the State will coordinate its enforcement strategy with that of the Corps of Engineers and EPA.

(l) Where more than one agency within a State has responsibility for administering the State program:

(1) A memorandum of understanding among all the responsible State agencies which establishes:

(i) Procedures for obtaining and exchanging information necessary for each agency to determine and assess the cumulative impacts of all activities authorized under the State program:

(ii) Common reporting requirements; and

(iii) Any other appropriate procedures not inconsistent with section 401 of the CWA or these regulations;

(2) A description of procedures for coordinating compliance monitoring and enforcement, distributing among the responsible agencies information received from applicants and permittees, and issuing reports required by section 404 of CWA or these regulations.

(m) Where several State 404 permits are required for a single project, a description of procedures for:

(1) Ensuring that all the necessary State 404 permits are issued before any of the permits go into effect; and

(2) Concurrent processing and, where appropriate, joint processing of all of the necessary State 404 permits.

§ 233.23 Attorney General's statement.

(a) Any State that seeks to administer a 404 program shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel) that the laws of the State, or an interstate compact, provide adequate authority to carry out the program described under § 233.22 and to meet the requirements of this Part. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the



State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program.

(b) When a State seeks authority on Indian lands, the statement shall contain an appropriate analysis of the State's autocracy.

(c)(1) The State Attorney General's statement shall contain an analysis of State law regarding the prohibition on taking private property without just compensation, including any applicable judicial interpretations, and an assessment of the effect such law will have on the successful implementation of the State's regulation of the discharge of dredged or fill material.

(2) Where more than one agency has responsibility for administering the State program, the Attorney General's Statement shall include certification that each agency has full authority to administer the program within its category of jurisdiction and that the State as a whole has full authority to administer a complete State section 404 program.

#### § 233.24 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a 404 program shall submit a Memorandum of Agreement. The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this Part and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate. These procedures shall implement the requirements of § 233.39.

(2) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the Stat and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(3) Provisions for modification of the Memorandum of Agreement in accordance with this Part.

(c) The Memorandum of Agreement, the annual program grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this part. The State/EPA Agreement may not override the Memorandum of Agreement.

[Note. -- Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. However, it may still be appropriate to specify in the MOA the basis for such detailed agreements, e.g., a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA agreement.]

(d)(1) The Memorandum of Agreement with the Regional Administrator shall also specify:

(i) The categories (including any class, type, or size within such categories) of discharges for which EPA will waive review of State-issued permit applications, draft permits, and proposed general permits. While the Regional Administrator and the State, after consultation with the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, may agree to waive Federal review of certain "classes or categories" of permits, no waiver may be granted for the following activities:

(A) Discharges which may affect the waters of a State other than the one in which the discharge originates;

(B) Major discharges;

(C) Discharges into critical areas established under State or Federal law including fish and wildlife sanctuaries or refuges, National and historical monuments, wilderness areas and preserves, National and State parks, components of the National Wild and Scenic Rivers system, the designated critical habitat of threatened or endangered species, and sites identified or proposed under the National Historic Preservation Act;

(D) General permits;

(E) Discharges known or suspected to contain toxic pollutants in toxic amounts under section 307(a)(1) of CWA or hazardous substances in reportable quantities under section 311 of CWA.

(ii) A definition of major discharges.

(2) Where more than one agency within a State has responsibility for administering the program, all of the responsible agencies shall be parties to the Memorandum of Agreement.

(e) Whenever a waiver is granted under paragraph (d)(1) of this section, the Memorandum of Agreement shall contain:

(1) A statement that the Regional Administrator retains the right to terminate the waiver as to future permit actions, in whole or in part, at any time by sending the State Director written notice of termination; and

(2) A statement that the State shall supply EPA, the Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service (unless receipt is waived in writing) with copies of final permits.

#### § 233.25 Memorandum of Agreement with the Secretary.

Before a State program is approved under this Part, the State shall enter into a Memorandum of Agreement with the Secretary. Where more than one agency within a State has responsibility for administering the State program, all of the responsible agencies shall be parties to the Memorandum of Agreement. The Memorandum of Agreement shall include:

(a) A description of State regulated waters, as identified by the Secretary.

(b) Where an agreement is reached, procedures for joint processing of permits for activities which require both a section 404 permit from the State and a section 9 or 10 permit from the Secretary under the River and Harbor Act of 1899, provided such procedures satisfy the requirements of this Part.

(c) An identification of those general permits, if any, issued by the Secretary, the terms and conditions of which the State intends to administer and enforce upon receiving approval of its program and a plan for transferring responsibility for these permits to the State, including procedures for the prompt transmission from the Secretary to the State Director of relevant information not already in the possession of the State Director including support files for permit issuance, compliance reports and records of enforcement actions. In many instances States will lack the authority to directly

administer permits by the Federal government. However, procedures authorized under State law may be established to transfer responsibility for these permits.

(d) Procedures whereby the Secretary will, upon program approval, transfer to the State pending section 404 permit applications and other relevant information, not already in the possession of the State Director.

(e) Procedures to ensure that the State Director will not issue a permit on the basis of any application received from the Secretary which the Secretary has identified as incomplete or otherwise deficient until the State Director receives information sufficient to correct the deficiency.

(f) A provision that the State shall not issue any section 404 permit for a discharge which, in the judgment of the Secretary after consultation with the Secretary of the Department in which the Coast Guard is operating, would substantially impair anchorage or navigation.

(g) Those classes or categories, if any, of proposed State permits for which the Secretary waives the right to review.

(h) Other matters not inconsistent with this Part that the Secretary and the State deem appropriate.

[Note. -- For example, where a State permit program includes coverage of those traditionally navigable waters in which only the Secretary may issue section 404 permits (by virtue of section 404(g)(1) of CWA), the State is strongly encouraged to establish in this MOA procedures for joint processing of Federal and State permits, including joint public notices and public hearings.]

#### § 233.26 Requirements for permitting.

(a) All State 404 programs must have legal authority to implement each of the following provisions and must be administered in conformance with each; except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

- (1) § 233.4 -- (Application for a permit).
- (2) § 233.6 -- (Signatories);
- (3) § 233.7 -- (Applicable permit conditions);
- (4) § 233.8 -- (Establishing permit conditions);
- (5) § 233.9 -- (Duration);
- (6) § 233.10 -- (Schedules of compliance);
- (7) § 233.11 -- (Monitoring requirements);
- (8) § 233.12 -- (Effect of permit);
- (9) § 233.13 -- (Permit transfer);
- (10) § 233.14 -- (Permit modification);
- (11) § 233.15 -- (Permit termination);
- (12) § 233.17 -- (Noncompliance reporting);
- (13) § 233.18 -- (Confidential information);

- (14) § 124.3(a) -- (Application for a permit);
- (15) § 124.5(a), (c), (d), and (f) -- (Modification of permits) except as provided in § 233.39(b)(2);
- (16) § 124.6(a), (c), (d), and (e) -- (Draft permit) except as provided in § 233.39(b)(2);
- (17) § 124.8 -- (Fact sheets) except as provided in § 233.39(b)(2);
- (18) § 124.10(a)(1)(ii), (a)(1)(iii), (a)(1)(v), (b), (c), (d), and (e) -- (Public notice);
- (19) § 124.11 -- (Public comments and requests for hearings);
- (20) § 124.12(a) -- (Public hearings); and
- (21) § 124.17(a) and (c) -- (Response to comments).

[Note. -- States need not implement provisions identical to the above listed provisions. Implemented provisions must, however, establish requirements at least as stringent as the corresponding listed provisions. While States may impose more stringent requirements, they may not make one requirement more lenient as a tradeoff for making another requirement more stringent; for example, by requiring that public hearings be held prior to issuing any permit while reducing the amount of advance notice of such a hearing. State programs may, if they have adequate legal authority, implement any of the provisions of EPA's other permit regulations.]

(b)(1) State 404 permit programs shall have an approved continuing planning process under 40 CFR 35.1500 and shall assure that the approved planning process is at all times consistent with CWA.

(2) State 404 programs shall ensure that any board or body which approves all or portions of permits shall not include as a member any person who receives, or has during the previous 3 years received, a significant portion of income directly or indirectly from permit holders or applicants for a permit.

(i) For the purposes of this subparagraph:

(A) "Board or body" includes any individual, including the Director, who has or shares authority to approve all or portions of permits either in the first instance, as modified or reissued, or on appeal.

(B) "Significant portion of income" means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement.

(C) "Permit holders or applicants for a permit" does not include any department or agency of a State government, such as a Department of Parks or a Department of Fish and Wildlife.

(D) "Income" includes retirement benefits, consultant fees, and stock dividends.

(ii) For the purposes of this subparagraph, income is not received "directly or indirectly from permit holders or applicants for a permit" when it is derived from mutual fund payments, or from other diversified investments for which the recipient does not know the identity of the primary sources of income.